Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

Nos. 77-10, 77-11, 77-12, 77-47, and 77-64

EXXON CORPORATION and PHILLIPS PETROLEUM COMPANY,

SHELL OIL COMPANY,

CONTINENTAL OIL COMPANY and KAYO OIL COMPANY,

GULF OIL CORPORATION,

ASHLAND OIL, INC., COMMONWEALTH OIL REFINING COMPANY, INC. and PETROLEUM MARKETING CORPORATION,

Appellants,

v.

GOVERNOR OF THE STATE OF MARYLAND, *et al.*,

Appellees.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

APPENDIX

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APPEALS DOCKETED JULY 1, 8 AND 11, 1977

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Supplemental Opinion of the Court of Appeals of Maryland dated April 13, 1977 is printed at 279 Md. 456 (advance reports) and at 372 A.2d 237 and appears in the Joint Appendix to Jurisdictional Statements at pages 45a to 48a.

(Witness) My name is Charles Horace Berry, I live at 47 Maclean Circle in Princeton, New Jersey.

DIRECT EXAMINATION

By Mr. Greenwald:

Q. Dr. Berry, you hold a Ph. D. in economics from the University of Chicago, is that correct? A. That's correct.

Q. And do you currently hold a teaching position? A. Yes, I do.

Q. Where is that teaching position? A. At Princeton University.

Q. At any particular school at Princeton? A. My appointment is in the University as professor of economics and public affairs. That's a joint appointment. I'm a professor of economics for the Economics Department and a professor of public affairs within the Woodrow Wilson School of Public and International Affairs; and the title reflects the fact that it's an appointment in each of the two departments as it were.

* * *

(T. 261) (Dr. Berry's resume (Curriculum citae) filed herewith as Plaintiffs' Exhibit No. 5).

Q. Dr. Berry, have you ever testified from the professional economist's point of view as to the validity of diverstiture legislation related to the petroleum industry? A. To the validity of it?

Q. Yes, as to whether from an economist's point of view this is anti-consumer legislation or pro-consumer legislation? A. I've testified as to the desirability of legislation of that sort on one occasion, yes.

(T. 262) Q. Would you share with us the circumstances under which you've so testified? A. About a year ago, a little bit more than a year ago, I was asked by Assemblyman Baer of the State of New Jersey to appear before his committee of the Assembly and give my

reaction as a disinterested outsider but as somebody concerned with analyzing this type of policy proposal as to the desirability for the consumers population in New Jersey of adopting of a bill which restricted refiners and distributors of petroleum products from operating retail facilities within the state and I did so I believe in September of last year.

Q. Were you sponsored or supported by any particular interest group in offering this testimony? A. No, I was asked specifically by Assemblyman Baer to come in as somebody who was not directly involved in any way with the—with those hearings or with the development of that bill or with its advocates and to react independently and give the committee my judgment with respect to whether it was a good bill for the consumers and residents of the state. I did so in exactly that spirit.

Q. Were you paid for your analysis of this proposed New Jersey legislation or for your testimony? A. No, I did it because I was asked to do it by Mr. Baer.

* * *

(T. 269) Q. Now, Dr. Berry, you've been retained by Gulf Oil Corporation to act as an expert in this case, is that correct? A. That's correct.

Q. And you're being paid for your efforts, is that correct? A. Yes, I am.

Q. Basically Gulf has requested that you review the legislation at issue here particularly Paragraphs B and C of Chapter 854 of the Laws of Maryland 1974 from the point of view of the consuming public, is that correct? A. That's correct.

Q. Have you made such a review?

(Mr. Woodstock) Objection, Your Honor.

(Court) All right, sir.

(Mr. Woodstock) I don't believe that the witness has been qualified sufficiently to testify as to this legislation,

number one, with regards to petroleum marketing; number two, what the effects of vertical integration in the retail marketing of Maryland, number three, as a consumer expert with regards to consumers within the State of Maryland.

(Court) Overruled.

* * *

(T. 270) Q. Have you made such a review of Paragraphs B and C of the Laws of Chapter 854 of the Laws of Maryland 1974? A. Yes, I have.

Q. All right, and have you reached any conclusion based upon your expertise as a professional economist whether Paragraphs B and C will benefit or hurt the Maryland consumer? A. Yes, I have.

Q. What is that conclusion? A. I think that the effect of the implementation of this law will be adverse to the interests of the consumers in the State of Maryland.

Q. Why do you say that, Dr. Berry? A. I think if—I think that the statute if implemented would have three quite separate and, of course, related effects which would operate in the direction of lessening the intensity of competition primarily within the retailing of petroleum products within the state, possibly within the refining of the product within the country and that as a consequence of both of these effects each of them operates in the same direction, each would tend to alleviate downward pressure on the price of petroleum products which would otherwise be present (T. 271) and, therefore, would operate to the disadvantage of the consumers of petroleum products within the state, quite possibly also outside the state; and I can amplify that a little bit if you would like.

Q. Yes, would you please explain exactly how in your opinion the Paragraphs B and C of the statute— A. Well, as I—

Q. —accomplish that. A. As I understand the content of Paragraphs B and C, there would be basically three things. It would require that a certain class competitor currently active at the retail level within the State of Maryland would have to either divest themselves of refining interests outside the state, create them within the state or have to cease activity as retailers within the state.

Secondly, no refiner or producer of crude petroleum anywhere in the country would be permitted under these statutes—under these paragraphs if effected to enter the state at the retail—in terms of the retail distribution of petroleum products and that would constitute a complete barrier to entry. That's prohibition with respect to entry.

For both those reasons whatever regulatory impact of with respect to maintain margins low may be present regarding non-integrated—I'm sorry integrated companies operating at (T. 272) the retail level within the state now and the impact of any integrated refiner which might integrate to the state would be lost. Therefore, the net direction of those two effects would be to reduce the vitality of competition at the retail level within the state. In addition, no retailer active in the petroleum industry within the state would under this statute be permitted to integrate backwards to acquire position in either refining or production while maintaining his position within the state and that would exclude that class of competitors from the potential entry at the refining—at the refining level, and the direction of that effect is also clear. It cannot improve vitality of competition at the refining level. It might quite possibly lessen it and once again for that reason the regulatory pressure, power of competition to control prices at the wholesale level would also be lost. I put these both together and the direction of any effect in the aggregate, combining the impact would be towards higher prices. In other words prohibiting, establishing

those two bars to entry and excluding a particular class of competitors presently within the market would have the net effect, I think, if any, of increasing the price of petroleum products at retail.

Q. In your judgment is there any particular advantage to the consuming public in permitting company operated stations? A. Yes, I think there are, but that's really just the (T. 273) mere image of the undesirability of excluding a particular class of competitor from the industry at retail. It seems to me that one always—that one ought to be very concerned whenever a particular class of competitor is removed from a market and it seems to me that in the retailing of petroleum products of this sort and retailing of products of any sort, it's highly desirable to let every potential and actual competitor compete within that market so that the full array of possible methods of retailing a product may be preserved. In the cases of the petroleum industry it's a rather peculiar industry in that the basic product, which I take it is gasoline, is typically retailed in conjunction with a range of the different types and associated services, ranging from very liberal to a great deal, ranging from a lower price, for example, at a perhaps net thoroughly desirable location to a higher price at a very convenient location. It's important—it's important if that market is to operate satisfactorily that as much opportunity to move in and offer whatever type of package particular retailer feels is appropriate, particular seller feels is appropriate so the consumers can register their choice within that market; and it's only by having that array of options open to the consumer the consumer by reacting will signal to the sellers of the product in question what it is that he wants so that that marketer in fact can respond to that.

(T. 274) If one excludes a particular class of competitor, that means that some type of outlet may be lost, the potential for consumers to react to that may be lost, the market may act less perfectly than it otherwise would.

Q. Are you able to offer us an example of a situation in which the consumer did lose for a period of time the opportunity to make a choice? A. I'm not sure that I can offer a precise—well, perhaps I can. Let me offer, if I may, two quick illustrations. One that comes to mind is the situation which existed in this country prior to the introduction of small foreign-built motor cars, particularly Volkswagens. There had been some debate prior to that time about what it was consumers really wanted and it was alleged that the manufacturers felt that consumers wanted large, powerful automobiles. They did not—they did not provide—domestic producers did not provide a viable option in terms of the small foreign car, but a potential competitor, a German manufacturer, came in with another sort package a small Volkswagen which also was reliable and there was a response within the American market; and the large domestic producers lost sales to the new entrant, Volkswagen, and what we've seen since that time for the past fifteen or twenty years is a response of the American producers to that competition; and it's become even more dramatic I think in (T. 275) recent years, that the presence of a new option within that market resulted in a dramatic shift within—in terms of the type of product that was made available. It's transportation in a different package. The same thing could happen within the petroleum industry, different packages presented in terms of that in fact people prefer that to what existed previously. They respond by moving in that direction. I would expect producers to respond by providing more of that type facilities. Very important

that one not say you can't move in and try and experiment because if you do, it may never be apparent what in fact it is the consumer in fact would respond to. I heard earlier I think today in this court there was mention of the discount house which is the same type of thing. Here's an innovation which somebody thought of and it turned out that this was a particular package of service plus product people preferred to the type of offer which existed previously. There was a response not only on the part of consumers but also subsequent response in terms of the types of packages of retail goods which became available.

That's the type of fluidity which one wants to maintain within these markets and that's the type of fluidity which may be impinged if one says you may not enter this market arbitrarily; and it seems to me that these two barriers, barrier to entry by the refiner, producer at the retail level, (T. 276) barrier to entry at the refiner, producer level in the case of the retailer only and the exclusion of that particular sect, producers and sellers from that market now would offer—would tend to offer only in the direction of reducing that fluidity, reducing that flexibility and making those markets work less perfectly; and therefore, not in the interests of the consumers without any question.

Q. In your judgment as a professional economist is the retail gasoline market currently a competitive market? A. Yes—

(Mr. Woodstock) Objection.

(Court) What's the objection?

(Mr. Woodstock) The objection is based on I don't believe he's testified that he's done any studies of the competitive market or retail sales of gasoline.

(Court) Have you, sir? A. I'm sorry, sir?

(Court) Have you conducted any study of the market of gasoline so as to be able to determine whether or not it is competitive? A. I've conducted no study but in the type of work that we do, the structural characteristics that are associated with the competitive industry are such that I think that I can answer that question.

(T. 277) (Court) All right, sir, go ahead.

A. My answer would be yes that as a professional economist, as somebody concerned with industrial organization the retailing of petroleum products under normal circumstances and I'd like to say here and now that I'm by no means an expert with respect to the existent controls that are imposed on this industry either at that level or at any prior level. The structure of that industry is such that it would be expected to be highly competitive. I say that because the number of firms competiting in it is by any measure very large. There are very many different actors in that particular industry, in varying degrees. It is not dominated by any single entity. The establishments themselves create no barrier to entry by virtue of the enormous financial cost which is associated with creating one. One might argue, for example, if you're talking about refining, the modern refinery is so expensive that the problem of accumulating sufficient funds to build it would create a barrier to entry. No such barrier exists with respect to the retailing of petroleum products. There are many different types, many different prices. I think that it's possible to answer that question simply by casual observation without having a detailed study of whether it's competitive or not competitive. Another way to look at it is that it must be obvious to everyone in this court room (T. 278) that his option with respect to where he can get petroleum products at retail even within Annapolis are relatively large. There are lots of outlets. He can shop, the

information with respect to the pricing he will have to pay at each of them is not hard to find, it's posted. The costs of getting additional information are not great. That's the type of situation in which industry is necessarily going to be competitive and it will remain competitive absent the type of regulation which begins to exclude competitors and prevent the competitive process from continuing.

Q. When you say that he is able to choose among the variety— A. He or she.

Q. He or she, who do you mean? A. The consumer.

Q. All right. In your judgment as a professional economist would the vertically integrated oil companies be motivated to drive out competition at the retail level?

* * *

(T. 279) A. Let me answer, Mr. Greenwald, first by making clear what it is that we're coming to in analyzing a situation of this sort. Our assumption is typically that the corporation wants either to maximize its income or typically to maximize its sales subject to some income restraint maintaining its income at some target of rate of return; and under those circumstances it's in the interest of the producer of a product such as petroleum, it would be under those circumstances in the interest of the producer of a product such as petroleum to (T. 280) maintain the highest degree of efficiency at the retailing level as possible. In other words to have his—have the costs that he bears for the retailing of his product whether he does that by doing the job himself or whether he does that by hiring somebody to do it for him by selling him the product and letting him resell it at least cost. It would not be in his interest under those circumstances to drive out more—a more efficient retailer of his product in terms of an independent sector solely to

be vertically integrated. He would have an incentive to integrate forward if he could do the job more efficiently at smaller margins which would imply other things being equal lower prices for consumers and, therefore, higher sales. He would not have an incentive to drive out independents, for example, or to integrate forward exclusively if he were not more efficient in so doing. If he were less efficient, he would cost them money; and if he would cost them money, I would assume that that would not be in the interest of a vertically integrated corporation.

I can give you a numeric illustration of that, if you would like, if it would help or if it's clear from what I've said, I'd be happy to leave it at that.

Q. Why don't you give us a brief illustration, if you will? A. Well, let me suppose the formula, I'll make it—(T. 281) I'll make it very unrealistic and very simple so that the analytics will become clear.

Suppose that we have a—suppose we're talking about gasoline and we're talking about the sale of the gasoline only, we're not talking about a situation where there are lots of different services combined with it just to keep it simple. We have a producer who has some crude and who has some refined gasoline which ultimately will be sold to consumers over some area. We have the gasoline at some central point. The gasoline at retail wherever he sells it, another unrealistic assumption, let's suppose will sell at a dollar. Our refiner has the refined product, it will sell throughout the country at a dollar. The question is, you know, what's it worth to him. Now if his options are only to hire somebody to take it to the consumer and to sell it to them at a payment of twenty cents a gallon, that petroleum is worth to him at his refinery eighty cents, a dollar less the twenty cents. That's the income. Now if in fact he himself could make the investment in the

facilities, provide the transportation and get it to that consumer at a cost of fifteen cents, would clearly be worth more to him. It would be worth eighty-five cents to him, a dollar less fifteen cents as opposed to eighty cents a dollar less the twenty cents and under those circumstances you would expect a profit making a corporation go forward, (T. 282) do the job itself because it's more efficient. Okay?

Alternatively, suppose that he's not more efficient at it, suppose that the market, that those independent dealers are much better at adjusting to the demands of the consumers wherever they are and if he does the job himself, it costs him twenty-five cents whereas he can hire them to do the job for him at twenty cents. Under those circumstances he would have absolutely no incentive to integrate forward vertically. It would cost him money and I would predict that he would not do it. Now the real question is which of those two alternatives exist within the particular market where vertical integration is at issue. The answer is frequently you don't know. Frequently the corporation may not know and so that one frequently will observe both types of retailing activity going on simultaneously. Now what that does is give the seller of the refined product or the product at wholesale, whatever it is, an indication with respect to the efficiency of his own operation and is judged by the efficiency of independents and the efficiency of independents is judged by what he knows about his own operation. It also gives him the flexibility to experiment, to see whether with different techniques he can't do better, provide something which the independents would emulate, subsequent would demonstrate to him—to them that this would improve this very technique. If you deny the option of integration, you (T. 283) deny that check,

you deny that element in terms of competition at the retail level, the likelihood of the consumer will be the ultimate loser.

I can—there are other I can expand on if you like.

Q. No, I think that's sufficient, thank you.

Suppose that if the vertically integrated oil companies embarked upon company operated retail outlets in a large way, a number of independents would inevitably be hurt. Wouldn't this in your judgment adversely affect competition? A. I think my answer to that, Mr. Greenwald, is that one must be very, very careful to differentiate between an adverse effect upon competition and an adverse effect on competitors. A competitor is in competition and with intense competition and with an increase in competition, it's quite possible the competitors can get hurt. It's a very bad mistake though it's a frequent one, it's a very bad mistake to infer that because a particular competitor is losing ground that competition has been lessened and that the consumer is being hurt. Quite frequently it's the other way around. Let me make that clear by going back to an earlier illustration. I spoke earlier about the introduction of Volkswagen as a new competitor within the United States.

Competition I think all of us would agree was heightened by the presence of that new competitor with a (T. 284) different technique of providing travel services to the American public. The domestic corporations got hurt. They lost the market share, their earnings went down, a couple went under; and subsequently the American manufacturers have responded by revising their notions about what type of product it is that they can sell efficiently within this market. The foreign market gets hurt. Each of those tools increased the efficiency of competition within those markets. In each case somebody got hurt, but the consumer was the beneficiary and

by the very nature of the competitive process there are always going to be winners and there are going to be losers; but what one must be sure is that no class is artifically protected from the competition of another group of competitors if one wants to preserve that type of competition; and in the case I just illustrated if one had said we're not going to let foreign cars be sold in the United States, that would have protected the domestic producers, that would have hurt the domestic consumer.

The discount stores which I also heard mentioned in here earlier are another illustration. With the arrival of the discount store, the department stores got hurt; and the department stores started to respond by becoming in part discount stores, the discount stores got hurt. The consumer was the ultimate beneficiary. Competition was increased but (T. 285) the process of the increased competition frequently does hurt some competitors and one ought to be very careful not to simply look to what happens to the competitor and say competition has been lessened. Look at the development of the super market. The super market came in, it was an innovation in terms of the retailing of food products. We have an enormous impact on corner stores.

Q. Corner grocery? A. Corner groceries stores or if we're talking about discount drug markets, they have an impact on the corner drug store. One could have jumped to the conclusion that because those competitors are dropping out that there is a decrease in competition within the industry, the competition has been—as it's been lessened, not true. Competition was heightened. Margins came down, some competitors went by the wayside. The consumer was the ultimate beneficiary and the whole process of analyzing this type of problem involved looking at the way in which resources—resources that are used in providing the types of services are

organized and we use in this system the competitive process to ensure that there is a gain to those who are efficient and a cost to those who are inefficient in terms of their place within the marketplace; and that process has to be maintained if those signals are to mean anything to corporations indicating to those how in (T. 286) fact they should conduct their affairs in accordance with the wishes, interests and demand of consumers.

Q. Dr. Berry, in your judgment as a professional economist do Paragraphs B and C of the legislation at issue have supporting them any rationale which could justify them as promoting the public welfare?

(Mr. Woodstock) Objection, Your Honor. I believe that what's good for the public welfare and the consumer—

(Court) Well, yes, I think you're right. If you rephrase the question, perhaps you can—

Q. Dr. Berry, in your judgment do Paragraphs B and C of the challenged legislation have any rationale to support them as promoting the Maryland consuming public?

(Mr. Woodstock) Objection, Your Honor.

(Court) Overruled.

(Mr. Woodstock) I don't understand—overruled.

A. Do you—if you mean looking at the provisions of these two paragraphs in this statute, can I find—do I have any form of explanation which would lead me to believe that an enactment or making those provisions effective could operate to the benefit of the consumers in the State of Maryland? My answer is no. I think the effect would be quite the opposite. I think it's very difficult to say that there would be an enormous and immediate effect but the direction and the effect (T. 287) is clear. It seems to me this is the type—this is the type of restriction which can only operate in the direction of lessening competition and that can only result in a lessening of the

regulatory impact of that device in terms of providing what the consumer wants efficiently and that means at low prices, I think.

* * *

(T. 287) CROSS EXAMINATION

By Mr. Woodstock:

Q. Dr. Berry? A. Yes, sir.

Q. My name is John Woodstock, Assistant Attorney General representing the State in these proceedings.

Dr. Berry, you've given us a lot of testimony on the effects of B and C. I'd like to ask you a few questions about some of the broad concepts that you have discussed. Can you think of any situations where vertical integration would perhaps be anti-competitive? A. Well, I can give you I think two situations have been (T. 288) rather special situations where there are let's say a very large-single, let me make it extreme and then we'll make a case I think stronger where there is a firm which is a monopolist, a single producer of a particular product, selling that product to a monopolist, which is the sole buyer of that product, if those two firms were to merge, it would seem to me it would make it more difficult for an outside firm to come in and compete within that industry since the outside firm coming in would by its very nature have to enter simultaneously at both levels; and if the capital costs were high at both, we're talking about establishing, for example, a manufacturer of motor car engines and a manufacturer of motor car exhausts, it would be more difficult for an outside competitor to come in because of the amount of capital required for entrance would be greater as a consequence of the fact that he would then have to come in at both levels or not at all. So that might be an example of a barrier to entry which would be a consequence of a vertical integration.

That's one situation where one might say one would like to keep those two firms separate because the likelihood that the monopolist would integrate forward to avoid the monopolist or the monopolist might prefer to integrate backward to avoid the monopolist; and there are situations of that sort in the- if you look at my writing, you will see that (T. 289) I've considered that type of situation.

The other situation where professional economists would be concerned about vertical integration does not relate to the vigor of competition. It relates to situations where competition is absent because of the exclusive right which is given to corporations who operate within that particular area; and I can give you a concrete illustration of the situation of that sort. Bell Telephone Company is given exclusive rights to sell telephone service in many parts of the country; and that—the price at which it may sell this is regulated locally. If that company were to integrate backward into the manufacture of telephone equipment as in fact AT&T has done through its ownership of Western Electric. That makes the regulatory process more difficult because you then have to inquire about the fairness of the price of the manufactured equipment as well; and in that type situation indeed one would have to raise the question of whether one wanted integration in that context so it's not really related to the question of competition. So I would say that the first illustration is really the most applicable one to your question.

* * *

(T. 290) Q. Isn't it true that when you speak of a vertical acquisition, part of—as part of vertical integration, aren't you in fact describing a system which does not ultimately result in an increase in the number of competitors? In fact doesn't it, if anything, would either

keep the number stable or (T. 291) possibly if the vertical acquisition was comprised of three small competitors that way, it would reduce the number of competitors? A. That's correct.

Q. That's somewhat—do you adhere to the theory that the more the competitors the better the marketplace? A. I adhere to the proposition that if a market is to behave competitively, it must have many competitors.

Q. Well— A. So that if we're talking about an acquisition of one of several hundred or several thousand, the answer is that's not apt to be significant. If on the other hand, this illustration we're talking about involved a firm vertically integrating forward and acquiring let's say thirty, forty percent of the market, at the subsequent stage, yes, one begins to worry about that. The concern is not with the vertical integration in that context, the concern is with the horizontal integration because in that illustration you gave me it would be the firm which was vertically integrated. We also had the horizontal integration at subsequent stages three independent competitors were put together and I would be worried about the horizontal tie, that that consolidation at a single level began to get large relative to the market. If it's not that large relative to market, then the (T. 292) market is basically competitive and then my earlier illustration about, you know, what the effect of vertical integration would still stand.

Q. May I ask you—do you want to say more? A. No.

Q. * * * Have you ever undertaken any consumer studies or investigations relating to specific consumer preferences in the type of retailing in—of gasoline products? A. None that amounted to anything.

Q. Then your testimony with regards to consumer preferences today was based on general information from other areas, is that correct? A. Based—based then

basically on my training as an economist without—I don't intend for one minute to tell you that I'm an expert with respect to the —even this petroleum market or petroleum market nationwide.

* * *

(T. 294) Q. In your economic—expert economic opinion, would it be—is it necessary for the major oil companies to have fully vert—to fully vertically integrate into the direct operation at the retail level? A. Well, I really feel with respect to that question as phrased that I should say that I don't know because I'm not an expert in terms of what's necessary within the industry. I don't know the industry from the inside out. My expectation is that in general as Mr. Greenwald has mentioned what a corporation of this sort will do is pursue alternative strategy and my expectation would be that in something like the use of the automobile one might find under those circumstances that a company operating its own dealership, in other situations offering it through franchise dealers simply because in some circumstances one form of obtaining retail services is superior to the other. In some cases it might be that the corporation might be able to do the job more efficiently in selling, selling just adjacent, for example, to its factory, it might be convenient administratively in organi- (T. 295) zations simply to operate it directly. You get—alternatively these things are being retailed in some distant part of the country where control is optive, I guess that under those circumstances the balance would tend to go toward the independent. Again it's not in—It's in the interest of the seller of the product to find the most efficient way of getting his product to the people who want it in the form in which they want it and frequently that will be by using independent dealers by selling the product to them, letting them resell it or setting them up as independent,

you know, franchise dealers in some fashion. I don't mean to argue that under any circumstances any prior—one can know that this or that system is the best.

(Mr. Woodstock) I have no further questions of this witness. Your Honor.

(Court) All right, sir.

(Mr. Greenwald) No further questions, Your Honor.

(Court) All right, you can step down.

* * *

(T. 302) (Mr. Reid) We'd like to offer to the court a photograph that was taken, we can top the one that you've just referred to, these were taken in 1972. Price is shown in the thirty cent range.

(Photograph Filed Herewith As Evidence As Plaintiffs' Exhibit No. 7A through 7C)

(Mr. Reid) Secondly we'd like to offer the affidavit, Mr. Kelvey, relates to the investment of Petroleum Marketing Corporation in building and equipment in the State of Maryland both as to the initial investment and as to the current book value thereof.

(Affidavit Filed Herewith As Evidence As Plaintiffs' Exhibit No. 8)

(Mr. Reid) We have in addition two witnesses to testify, one briefly, Mr. Colin Carter, Commonwealth Oil Refining Company, Inc., second, Mr. Theodore Ferguson, Petroleum Marketing Corporation. First call Mr. Colin Carter.

(T. 303) COLIN P. CARTER,

a witness of lawful age after being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Reid:

Q. State your full name please. A. My name is Colin P. Carter.

Q. What is your address? A. 51 Crawford Terrace, Riverside, Connecticut.

Q. What is your relation to Commonwealth Oil Refining Company, Inc.? A. I am distribution planning manager in the head office in Park Avenue.

Q. What are your qualifications and background for that position? A. I was educated in England. I'm a professional chemist. I was employed in England by BP and Esso in positions involving market research, marketing general economics and specifically in the last two years in operations planning. I was hired by Commonwealth Oil from England in 1970 to become operations planning manager at their refinery in Penuelas, Puerto Rico.

Q. Does Commonwealth Oil Refining Company, Inc. have any other refineries other than the one in Puerto Rico? A. No.

Q. Does it have any production capacity? (T. 304) A. Production of crude oil, none.

Q. Are you familiar with the history of the relationship between Commonwealth Oil Refining Company, Inc. and Petroleum Marketing Corporation? A. Reasonably, yes.

Q. Would you explain that please? A. The negotiations for a merger begun in 1969. They were completed in the first quarter of 1970 and Petroleum Marketing Corporation became a subsidiary of Commonwealth Oil Refining Company.

Q. And that is a wholly owned subsidiary? A. Became a wholly owned subsidiary.

Q. Are you familiar with the operations of Petroleum Marketing Corporation in the retail gasoline market? A. I have some knowledge of their operations, yes.

Q. Where does Commonwealth obtain its crude oil? A. Historically it's obtained its crude oil almost entirely in

the Carribean. Beginning in 1971 we began to obtain our crude oil from other parts of the world. We now obtain approximately seventy, seventy to—about seventy percent of our crude oil in the Carribean, the balance in the rest of the world, largely Africa.

Q. What has happened to the foreign crude oil market in recent years? (T. 305) A. From the onset of CFXC what today seems a relatively small increase leading to the dramatic increase that came about in the end of '73 that—well, particularly the end of '73 and right at the beginning of 1974. In fact, I at your request I prepared a chart showing crude costs and in fact showing how other costs associated with getting gasoline through to the public have changed since 1969.

Q. Is that the chart on the easel there? A. That is the chart on the easel.

Q. Would you explain the chart to the court please?

* * *

(T. 305) A. This is a plot of costs. The blue is crude oil costs in terms of dollars per barrel with this scale here. This one is dollars per barrel. This one is the same scale just expressed in terms of cents per gallon. Here we have the years 1969 through '75. The orange above the blue represents the plot of refinery operating costs. This is in fact added to those. There's crude costs added to this then becoming the operating costs. The green is freight costs from Puerto (T. 306) Rico to the east coast. The pink represents a plot of PMC operating costs expressed in terms of either dollars per barrel or cents per gallon. The brown portion represents the taxes. I have shown each of them sequentially. The implication would be that this represents the cost of gasoline. That isn't true. This represents the addition of all the costs that can be associated with it, but in fact gasoline has to bear more than its share of the costs for the reason that if you like

residual fuel, which is one of the other products from crude oil, tends not to. You cannot avoid making basically three products from crude oil so this is in a sense a simplification, but it does represent in sequence the costs Commonwealth Oil has had over this period; and I have also shown on the graph a plot of our PMC pump price, weighted average pump price over the whole system, this isn't just the Maryland pump price, to emphasize the problems specifically that Commonwealth Oil has had because of this foreign crude.

Q. What effect has the increased in the cost of foreign crude and other increases had with respect to the pump price of Scot gasoline? A. The price of Scot gasoline in competition with everybody else had to go up. However, Scot gasoline has to be competitive and I think the graph really makes the rest of (T. 307) that particular point. Beginning with 1975 you can see the improvement with the onset of the crude equalization program, but that gap is still significantly less than this one.

Q. And this one being around 1971, '72? A. Yes, going through—right through.

Q. Directing your attention to the block of 1974, does the chart indicate that Scot gasoline was for a period of time sold below cost? A. This certainly would since as I said before, if anything, gasoline has to bear a high cost in this one. Yes, this would show this.

Q. Some of the lines as they become vertical become narrow which indicate—I draw your attention specifically to taxes which get narrow in this area. Does that indicate that the taxes were less there for instance? A. No, in fact what you're plotting it, of course, the vertical height and this apparent narrowness is a result of—really what you're plotting there if you like is a time difference, a relatively small time difference, so it plots a rapid changeover of small time distance. No, the thing that is significant

would be dropping a pump line, a vertical line right down there where if you could imagine this push flatter, you'd see in fact that taxes have tended to increase all along, as virtually all those costs have. Sorry, I think I was (T. 308) looking at operating costs, not taxes that time, but same plot.

CROSS EXAMINATION

By Mr. Woodstock:

Q. Let me ask you with regards to that chart, what does taxes indicate? All taxes, what taxes are—what taxes are indicated— A. Those are all the taxes that are added onto the pump price, the—both federal and state taxes.

Q. Does that reflect just Maryland's or is that— A. That is—no, those are all taxes for the whole system. That is a plot of the whole Scot system. Obtaining the historical data particularly just for the State of Maryland would have been difficult, so we plotted the whole PMC system, which is basically centered in this area.

Q. How many states is that? A. Seven states, seven states I believe.

(Mr. Reid) We'd offer the chart as an exhibit, if the court please.

(Court) All right, sir.

(Cost factor changes chart filed herewith as Plaintiffs' (T. 309) Exhibit No. 9 as evidence)

THEODORE E. FERGUSON,

a witness of lawful age after being duly sworn, deposes and says:

(Clerk) State your full name and address.

(Witness) Theodore E. Ferguson. 1703 Hicks Drive, Vienna, Virginia.

DIRECT EXAMINATION

By Mr. Reid:

Q. Mr. Ferguson, what is your position with Petroleum Marketing Corporation? A. I'm executive vice president.

Q. How long—in what areas of the operation are under your supervision? A. I'm chief executive officer of the company and that's inclusive of retail and wholesale marketing, going down through the organizational chart covering real estate, operations, accounting groups report to my office, the entire organization of Petroleum Marketing.

Q. How long have you held that position? A. For approximately—approximately four and a half (T. 310) years.

Q. Incidentally, where is your office? A. It's 7900 West Park Drive in McLean, Virginia.

Q. Is that the main office of Petroleum Marketing Corporation? A. That's our corporate headquarters, yes.

Q. What are your qualifications for the position you hold with the Petroleum Marketing Corporation? A. Well, I've attended school at the University of Florida, I was two years with Tidewater Oil Company, which is presently known as Getty Oil Company, even prior to that I was a Cities Service dealer and, of course, I've been with the company for fifteen years. I have come through the ranks so to speak from a retail service station supervisor, servicing anywhere from twelve to seventeen or to even seven stations in the beginning through retail sales manager, vice president of retail sales and holding within the company supply and distribution functions, overall marketing functions and then executive vice president.

Q. Have you been with the company since its inception? A. No, I've not. I came with the company in 1960. That's approximately four years after it was formed. When I came with it, we were very small. We had approximately six stations, primarily in Maryland and about six under construction, (T. 311) some of those being in Maryland and some in Virginia. In fact our corporate headquarters were in Pasadena in the rear of a service station prior to my coming to it, and then about six months before I came, they were in the process of moving and moved to the Investment Building in Washington; and that was the beginning of the company.

Q. Who was he founder of the company? A. Norman C. Keith. The company was, as I say, founded on a Delaware corporation, but was founded here in Maryland with the first two stations opening, one in Towson, one in Pasadena and then growing from there from two stations to when I came with the company, we'll call it about thirteen and now we're up to a hundred and forty some stations and property.

Q. How many of those are in Maryland? A. Twenty-one stations in Maryland.

Q. How does Petroleum Marketing Corporation participate in the retail markets for the sale of gasoline? A. We're a what we would call a high volume outlet. Some people would call them cut rate, some would call them highly competitive. We think of ourselves as an independent marketer. We are highly competitive in the market. We operate on the basis of the public, what we think they need to gain their patronage, which has been as large a property as we could find; and as competitive prices as we could find. We have (T. 312) what we think is a somewhat of a different image and I think that the gentleman prior to me emphasized that each company has its own marketing method or motif, and I think he

called it market retail force or something; and I think that this is what we have developed. We have developed our own. It might vary by degrees but I think it is the entire package that makes for a successful high volume stations which is what we have done.

Q. Specifically do you participate through dealership operations or are your stations company operated? A. We're one hundred percent company operated. We have in the past and from our conception experimented as we have had the right to do and we have done this and found that the company operation was the best method for us to obtain objectives and to maximize the profits.

Q. What are the various factors which you see that go into the particular type of company operation as Scot runs or the PMC runs through the Scot stations? A. Well, I think being somewhat redundant, I think that one, I think our competitive approach is the most important to us in obtaining the volume that we need to justify our investments and then following along we need control of that operation which sometimes is construed to be nasty but I'm using this in the sense of controlling that price to be competitive (T. 313) and then it doesn't miss one thing in the operation, it goes on to your uniforms, it goes on to your hours of operation, how your station is maintained, how your people are trained, how you approach, what sort of advertising you permit, what type of advertising you don't like, do you—what do you permit on that station, what—it's an overall image I think is what I'm really trying to say; and we have developed that with policies, with training and so forth to obtain these volumes where we think it—we think it's us and we think it's successful and basically we've proven that not just by making dollars because we're losing a few on your chart there, but throughout the years we have been successful, and we have done it by taking our ups and

downs in the marketplace relative to profit making to maintain this image.

Q. Incidentally could a dealer take these ups and downs that you're talking about? A. In the last few years he'd have pretty hard time of it. Even in my period of time with the company, we have had and we felt it was an advantage by being company operated in that we have many periods of time and it might stretch for four and five months at a time where we will break even with slight losses. Call that—call it changing dollars. I think that if you go back in the dealer operations in the period of time that I'm talking about coming up with company dealer (T. 314) turnover was just one of the biggest jobs that anybody in the oil company had to do was replacement of dealers. I think even the federal government has reflected in four and five years ago the most vulnerable business in the country for bankruptcy was the service station. I think all our ends of operation have avoided that from our standpoint; and I really don't think that generally this—in our position relative to our crude costs that a dealer could have sustained it. I don't feel I could have personally.

* * *

(T. 314) Q. All right, may I start again? I'm going to ask you about each of the factors that you just testified to with respect to the overall image necessary to be a high volume, low cost operation and ask you how Petroleum Marketing Corporation controls the price of the gasoline that is offered to sale to the public and included in that answer please tell us how your price relates to the price of the major oil companies. A. Well, I'll start with the latter. We're approximately two cents below major brand competition. This varies, of course, (T. 315) from station to station, but I think on an average we're probably two cents to two two. It might be one seven for the moment

and I think that pricing in marketing is the thing of the moment, but to be fair on the average I would say we're from one to two cents below major competition and I mean to say those offering full service, bays, tire repairs, batteries and so forth. Since we don't off this type of thing, we're gas, easy in, easy out type of operation.

Q. Why is that differential necessary in order to sell Scot gasoline? A. Well, we need the volume because our operation, our—I think what I'm trying to say is that particularly with our manufacturing costs we've got to maximize the profit. Since we became associated with the refiner, I think this has even become more apparent and, of course, the world situation hasn't helped us; and I think that particularly at this time we have to maximize them, which I think the chart even bears out to just stay alive.

Q. Do you think Scot gasoline would have appeal to the motoring public if it was priced at the same price as the major brands? A. Well, from my experience, I would probably estimate, which is very presumptuous, but I'd probably lose seventy percent of my volume if I tried to market at major brand prices. (T. 316) We've had some experience where we've tried it. Going back four or five years ago, we tried this, we've experimented with it. We—to show you we even tried experimenting with the service. We probably were one of the pioneers in this area with what these fellas call a—earlier car care center. I had three of them. It didn't work. Our image just didn't lend itself to this. We finally ended up closing these and going back to our traditional company operated stations, high volume, easy in, easy out, personnel type operation.

Q. The second thing I think you mentioned was hours of operation. What is the policy of Petroleum Marketing Corporation with respect to the hours the stations operate? A. We generally like to after taking field surveys

of what competition has established per hour of operation, we try to stay open, open an hour earlier, close an hour later. Also as a rule of thumb policy, after evaluating the traffic, the market conditions and the volume and our experience at that location, our basic aim is to operate on a twenty-four hour basis. We found that this lends itself to control, helps us establish the volumes that we need and become a more efficient operation.

Q. How do you control the method of operation at a Scot station? A. We have a management team, consists of vice president (T. 317) of retail, he in turn has district managers and supervisors report to the district managers. Generally our people will supervise on the basis of six to eight stations. Because of the nature of our operations, because we are a cash business primarily, it's necessary that we control the money, we control these things that we think are necessary to keep our image, that being the hours, checking that the station is open, training the personnel, keeping good looking equipment, having—making sure the stations are washed down and going through what we think is general maintenance and upkeep necessary for operation, therefore, we back it up with personnel that might sound like a lot of people but it's actually minimum.

Q. Do you provide uniforms, for instance, for your attendants? A. Yes, we do, we have a company color, red pants and white shirts and red jackets and red caps; and when possible black bowties and so forth; and this is one of their jobs to try to maintain this image.

Q. How do you assure that these people will present a good appearance at all times as far as having clean clothes, things like that? A. We do their laundry for them.

Q. You pay for the cost of cleaning the clothes? A.

Yes, we do; we pay the costs and we provide the men (T. 318) with a change of uniform daily.

Q. Do you have any service facilities whatsoever at any of your twenty-one stations in Maryland? A. No, we're—where we have taken over stations with bays, we have removed the lifts and I believe that there were only about seven of those and blocked up the bays and have used these bays for the storage of our oil and merchandising signs and so forth; more in our maintenance area than for anything else. We just don't offer facilities.

Q. Do you sell tires, batteries or other accessories at your stations? A. No, we don't.

Q. Why don't you provide maintenance services and TBA sales? A. Well, we—we have—we have a philosophy that we think and I believe it's beared itself out that this may be an age of specialties. I think that if you're going to wait on people and we have found that about forty percent of our customers are women, we feel that it takes a clean type of personnel, clean appearing, we didn't feel that we could it with mechanical work. There are some other reasons which are basic and possibly important. To develop the company to the size that we have, quite a few of the zoning ordinances and at the hearings where we presented our case, (T. 319) they prohibited us from doing mechanical work, storing tow trucks and in a couple instances, it is in our zoning that we will not do any mechanical work, we will not wash cars, and many attempts have even been to regulate our hours of operation. But some thinking has changed since the embargo, but I haven't been in for zoning since then.

Q. Couldn't you enter into an arrangement with a dealer whereby he would agree to these same factors that you've just mentioned a certain price, a certain hours of operation, wearing the company uniform, things of that

nature? A. Well, under the present regulations as I've been advised by several attorneys that it would be impossible to put a man into the station and require that—of this independent businessman that he maintain hours or even wear a uniform and in many cases I think it's not even—I'm not sure that whether he'd have to buy our product or not. So I don't feel along with some other problems that we're faced with and that I don't believe that I could offer him a price for gasoline that he could live with, I think it would be absolutely impossible for Scot to go to a dealer operation and anywhere near get a return on investment that would allow us to stay alive or to grow.

Q. Does Petroleum Marketing Corporation require its gasoline from Commonwealth Oil Refining Company, Inc.? (T. 320) A. Yes, we do.

Q. How is that delivered in the State of Maryland? A. It's delivered by ships in the Baltimore harbor and unloaded and placed into our storage tanks and then redistributed to the stations by either common carrier or our own leased trucks directly to the stations. It's one of our methods of operation. We've worked, I think, from the beginning to cut costs so that we could stay competitive in the market by acquiring this terminal I think that it—we felt at the time that it was one of our cost-cutting mechanisms; and again through our own trucking arrangement, we felt we kept our costs at a liveable level so that we could stay again competitive, and in addition to that to couple that supply cycle in our stations we have probably the largest storage tanks, the most—at least average wise that I know of in the entire country. We average throughout the entire country forty-three gallons—forty-three thousand gallons a station; and generally the new stations have eighty thousand gallons. This way it is economical for us. We do not have

to have deliveries day to day into that station. We can live for wnatever our business cycle is. It's another method. Again going back to the dealer, we're—we couldn't require the dealer to buy under this franchising laws and so forth in the quantities; and could say send us a hundred gallons or whatever commercially rea- (T. 321) sonable I guess; but we deliver in full tanker loads. Again maximizing our—

Q. Incidentally, how was PMC affected and how did it react during the so-called gasoline shortages of the early months of 1974? A. Obviously it's the embargo period you're talking about. We kept our stations open as long as we could. We were very fortunate to have supply and we only closed them down when it became unfashionable and almost immoral to stay open because they were saying turn down the lights and at first received criticism; and at that time I went along with the atmosphere of the country, and I did close some of the stations early. Also we went along with the President's proposal to alternate, for the closing of Sundays and then finally as the public and as supervisors of different counties because aware of what was really happening, we were one of the first to cooperate with them and I had personally received calls from Prince George's County, Montgomery County to keep stations open specifically on Sunday, which we did. We also gave preference to fire and police and I think we reacted rather well.

Q. How did that compare to most dealerships that were (T. 322) operating during that period of time? A. During that particular time I think that the dealer by being the individual in this, I think he was very conscious of his economics. He found an opportunity to close early, which he did. He also found that he could probably lay off some of his part-time or full-time people; and he worked through his allocation. I think as a company

I could be called and say yes, we'll do that even though it's not economical. I would have loved to operate those reduced hours. I could have sold the same amount of gasoline or more under reduced hours, but I think we did have a conscience and I think there is some advantage to be able to pick up a phone and say to the various parts of your operations we should do this to cooperate with the counties and so forth.

Q. You, of course, are familiar with the legislation that's the basis of this case. What would happen if to Petroleum Marketing Corporation if the legislation were enforced which would prohibit the operations by Petroleum Marketing Corporation of the Scot retail gasoline stations in the State of Maryland? A. Well, I think other than—I guess the growth would be completely out of the picture; and I believe that we would probably have to abandon our operations because I don't see—I've spent a lot of time pondering this and also working (T. 323) with Colin trying to develop what we had within our financial structure that would permit a dealership and basically just starting with the economic picture that we could not offer a tank wagon price that would be competitive. I'd say that Petroleum Marketing would end up out of the State of Maryland.

Q. And would you summarize then the reasons why Petroleum Marketing Corporation could not be converted to a dealership operation? A. In summary I would say the economics of a high—of the gallon of gasoline related to our high costs and our distribution system, remembering that our gasoline comes from Puerto Rico, which certainly adds close to two cents to it, another being the volume that it takes to support the economics of our entire operation. We require, I'd say, high volumes. In order to retain the high volume, we certainly have to be competitive and it could be construed to be super-

competitive, but competition is competition. Also the image that we need to project to obtain this not that always—price does not always do it alone; and I think these gentlemen this morning pointed this out; but we've tried to couple it; and I think we would lose that part of our image that would help us or damage us in our volume but at least towards our economic maximization of profits. I think, too, we would probably and I think without a doubt lose the economics of efficiency of (T. 324) running that station; and our outside sources of income are limited and majority of the properties are probably limited to the conversion to other restaurants or what have you. So there's no question we would be damaged; but restricting it to why we couldn't, I think that generally I have summarized it. I don't believe that we could—most any other circumstances than company operation maximize the profits in order to stay alive in the state.

Q. Looking at it from the other side of the coin, from the potential dealer, do you think that the—a dealer—a potential dealer would find appealing the operation of a Scot station as a dealership operation? A. Well, I think the typical dealer as we know the dealer, I don't know why he'd want it. As I say, we don't have any facilities. We have a small air compressor. We have no lifts. Just being redundant I'm afraid.

Q. No, go ahead, that's all right. Go ahead. A. But I don't believe the dealer could stay alive in there. He'd have to be relying particularly, strictly on a hundred percent gasoline and prohibited from doing any outside work, TBA et cetera that would be extra profits; and with a high dealer tank wagon, I think he would—he'd have to surrender very quickly.

Q. Do you think that he could sell gasoline to the (T. 325) motoring public at the differential that PMC has

been able to sell it, that is, two cents below the majors? A. At a loss? I wouldn't hardly think so.

Q. What about the initial investment a dealer would have in a station like Petroleum Marketing's Scot station? A. Well, the—I think the highest investment and this is somewhat conjecture, I guess, because I haven't found a way to do it to offer him this on an economic basis just from the purchase of the gasoline but to go behind that and say what does he purchase from me, well, does he purchase the gas. Fine. This would probably today I ask him to fill the tank, might run up to thirty-eight to forty thousand dollars, depending on the tax, how we handle that.

Q. Your taxes are larger than the average service station. A. Well, we have quite a few with eighty thousand gallons.

Q. And he'd have to make an investment in the gasoline in the tank. A. In the tanks.

Q. To begin with. A. That's cer— I would assume this because I haven't been able to develop this method that I would put a dealer in on. So I'm dealing in hypothetical structure here. If we (T. 326) adapted a few methods of operation that other companies have, we might sell him the pumps; and he would maintain them. That's why I say I'm really dealing in a fog to try and tell the court how I would structure this in that I've been unable to; but some companies have—the dealers do own the pumps. The pumps today are twelve hundred dollars a piece. We have eight of them. Some of ours are dual pumps. Some stations have twelve pumps so where do I stop with this economics. I'm not just saying I'm making up what I would want to sell him, but what method of operation I would come up to put a dealer in I've been unable to satisfactorily come up with it. So you're—my answer is very difficult, but it would be a considerable investment

on his part and I'm not too sure that he could make a return on it. He might do better in a savings and loan.

CROSS EXAMINATION

By Mr. Woodstock:

* * *

(T. 326) Q. I think I agree with almost all your statements as it regards the period of time '74 and perhaps early '75 when you obviously operating at a cost. If I understand this (T. 327) chart right, the price of the gasoline you would be supplying to a dealer, he would already be behind. A. True.

Q. Let me ask you if the same would be true the period of 1969, when your crude oil cost was significantly lower. A. If the same—your question is would the same thing—would he be losing—could he have done it in 1969?

Q. Yes. A. In general, I would say no. I might tell you what has happened and maybe a reason why. There were—back in '69, '70, even up into '71 if you made twenty-five points, this is one twenty-fifths of a penny on a gallon of gas when wage and hours were a dollar an hour, everything was small, your profits were small and you get it in volume; and I would say that that dealer would not have had the volume back then unless he had everything that we had. I don't believe he could have done it because that's where the period of time when the most dealers went out of business.

Q. Are you aware of any companies that made it during that period of time? A. Independents.

Q. Yes. (T. 328) A. On a dealer basis?

Q. On a dealer basis. A. I'm not aware of any.

Q. How about today in Maryland? A. Companies comparable to us? I don't know of any on a dealer basis.

Q. Are you familiar with the Crown operation? A. I

understand that Crown has—I thought that was a commission arrangement so I can't direct myself to their—

Q. How about Hess? A. I think Hess as I know it is a—defined by me as a commission agreement, defined by you and the government as a dealer.

Q. Well, no it's not. It's not defined by me at all. It's defined by the law. A. By the law.

Q. To your knowledge are they operating at a profit right now? A. I don't know that.

Q. You don't know that. Is Commonwealth Oil Company operating at a profit on the total aspects of all its refining operations? A. Not at present.

Q. It's operating at a loss? (T. 329) A. That's correct.

Q. If your crude costs were significantly lower and the way I read that chart everything else has remained relatively constant, the exception of your crude costs, would PMC or—well, PMC turn the same profit or the same rate of profit as it did in '68, '69 and '71? A. Very difficult to answer. All I can say is that there is a possibility.

Q. I'm basically asking you is if you did not incur those increased crude costs, wouldn't you—your profit picture absolutely without question be better. A. I think it would be down because—well, of course, the crude costs today are affecting utility bills and everything, so if you were—if you say that nothing in the economy went up, inflation didn't go, then everything remained the same, then I could probably answer yes. The cost of living, wages and so forth are eating into profits constantly whether crude goes or not.

Q. To the best of your knowledge I don't—to the best of my knowledge I don't believe you answered one question on direct. I believe you answered the second part of it but not the first part of it and I believe you

never did answer how does PMC control the price and set the price at its retail service stations. I believe you answered for the hours but you (T. 330) didn't answer for price. A. Okay, we survey the market; and I guess I should define that. We'll take the competition up and down the street, all of the gas stations in the area that would affect the buying habits of the motoring public in a particular area.

* * *

(T. 330) A. This is surveyed by our service station supervisors and district managers; and the information is passed along to our home office, vice president of retail discusses it with the either the field or the district passes the information along to me and we establish for that station that we feel to be a competitive price taking in all of the factors. Those factors being a mix of whatever we had surveyed from se'f service to full service to where we feel our relative position is to maintain the volume retaining our customers that are significant to our profit.

Q. Was Petroleum Marketing Corporation a profitable corporation prior to the time it was absorbed by Commonwealth? A. We were a—we were a viable entity, yes.

Q. Successful? (T. 331) A. I would say so, expanding.

Q. Growing? A. Yes.

Q. Growing. A. We found a need for crude. We were getting big enough that we needed supply.

Q. To the best of your knowledge when you set the price in the market, are you the lowest? A. No, I'm matching competition. I don't think that we would be called the lowest in the area. When we spot that price, we will match that price if it's significant to that station.

Q. If you decided—Maryland law B and C were upheld and you decided to convert to dealer leased operations, I believe you said you might do certain things. One of

them was what I believe was to the exclusion of other things, wouldn't you possibly consider extending credit to the gasoline in the ground as other major oil companies do to certain dealers?

* * *

(T. 332) A. I think this is certainly a factor that would have to be considered, in order for a company to do this, he would have to make cash arrangements to finance a dealer.

Q. How about renting him the equipment instead of selling it, including the pumps? A. These are all possibilities. This is done in a variety of companies today.

Q. Has Scot or I'm sorry, has PMC adopted the official corporate policy by a vote of their board of directors or by whatever means that if this law is upheld they will absolutely close up shop in the State of Maryland and not do business in the State of Maryland at retail? A. We have had no reason to this point to take it to our board.

Q. Does PMC also market petroleum at a wholesale level? A. Yes, we do.

Q. If B and C were upheld, wouldn't it be possible or would it be possible that PMC would continue to do business on that level? A. Well, we'd have to—we'd be faced with a very (T. 333) serious decision in that approximately sixty to seventy-five percent of our product that goes through the Baltimore terminal is destined for retail. I think that it would require an economic study to find if we should even remain in the harbor.

Q. Do you know— A. We have quite a few million dollars invested there.

Q. Do you make a profit selling it wholesale? A. On occasions.

Q. You actually do sell and not make a profit? A. That's correct. It's as competitive as the retail.

Q. What is the average monthly volume for the twenty-one Scot stations in Maryland? A. I would say approximately a hundred and ninety thousand. I'll have to use my company average. I haven't worked it out for the month. A hundred and ninety thousand gallons per station.

Q. Do you recall what it was in about 1969, 1970 and well, 1971? A. Without the record as to either one of the years, it was somewhere between '69 and '71 we had some averages that were ninety-eight to a hundred and two.

Q. At that time do you have any idea and I don't know whether you know this or not what your cost factors were as compared to other independent marketers similar to your (T. 334) operation? Are they same? A. What do you mean the same costs? Are you saying –

Q. The costs identified on that board. A. Well, in '71–'74, independents similar to us I would assume that our costs were slightly greater in that we're bringing the product from Puerto Rico. Others in similar situations probably were domestic oriented and did not have the freight included.

(Mr. Woodstock) I don't have any further questions, Your Honor.

* * *

(T. 336) OCTOBER 16, 1975

(Letter filed herewith as Plaintiffs' Exhibit No. 10A as evidence) (Affidavit and Exhibit filed herewith as Plaintiffs' Exhibit No. 10B as evidence).

(Original Affidavit filed herewith as Plaintiffs' Exhibit No. 10C as evidence).

(Court) All right, sir.

(Mr. Abrams) Your Honor, my name is Robert Abrams

and I'm an attorney for Shell Oil Company in this litigation.

The thrust, we believe, Your Honor, as the court has heard Plaintiffs' contentions concerning Paragraphs B and C of the Maryland Act, Shell's position is similar to that of other Plaintiffs in that it is Shell's belief that Paragraphs B and C are contrary to the interest of the petroleum products consumer and that they constitute an invalid exercise of the police power of this state. Insofar as Shell's legal contentions are concerned, Shell for the sake of brevity and this court's time will rely upon the joint brief filed in this action and adopt Mr. Noonberg's legal arguments presented with the opening of this case.

In terms of Shell's factual presentation, it is essentially divided into two parts, Your Honor, one part dealing with factual matters presented through the testimony (T. 337) of the company witness and I am happy in this regard to tell the court that the State through Mr. Woodstock and Shell have been able to reach an agreement in terms of an affidavit. The second part of Shell's case will be the expert testimony of, economic testimony of Dr. Matityahu Marcus. At this time, Your Honor, I'm going to offer into evidence the affidavit that I previously referred to and read to the court one paragraph of the cover letter to that affidavit.

(Court) All right, sir.

(Mr. Abrams) And that provides–and the letter is addressed to you, Your Honor.

"The affidavit and attached exhibits of Mr. Naughton, area manager for the southeast area of Shell Oil Company are being offered into evidence in Shell's case in chief in this action. The enclosed affidavit and exhibits were filed in lieu of either direct or cross examination pursuant to an agreement reached between counsel for Shell, counsel

for defendants as result of Your Honor's endorsement of such a procedure on August 22, 1975."

At this time, Your Honor, I would like to call Dr. Marcus to the stand.

(T. 338) DR. MATITYAHU MARCUS,
a witness of lawful age after being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Abrams:

Q. Dr. Marcus, please state your full name and address. A. My name is Matityahu Marcus, spelled M A T I T Y A H U, Marcus, M A R C U S. I live at 771 Cranford Avenue, Westfield, New Jersey.

Q. Dr. Marcus, what is your present employment? A. I am a professor of economics at Rutgers University.

Q. Have you held any other positions at Rutgers University? A. Yes. Over the period 1970 to 1975 I have served as the chairman of the Department of Economics, as the director of graduate studies in economics and as the director of the Bureau of Economic Research at Rutgers University.

Q. Have you held any other teaching positions? A. Yes, I have been teaching before management groups at Rutgers, Rutgers has a program known as the Rutgers Advance Management Program and over the last several years I've been a regular speaker on the economics of business and regulation.

Q. What courses have you taught at Rutgers? A. I've taught quite a number of courses, but primarily in the area of pricing, in the area of industrial organization, financial theory and advanced seminars in the economics of (T. 339) regulation. I might add that the courses in

industrial organization which I've offered for a good number of years have been offered within our PhD program for graduate students.

Q. What does industrial organization cover? A. Industrial organization is that part of economics which is concerned with the relationship of the structure of industry by structure I mean the size of firms, the market share and its relation to the behavior of firms in terms of pricing and similar characteristics and ultimately tracing back through to its effect upon the performance of the industry from the vantage point of the economic interests of consumers.

Q. Dr. Marcus, would you state your educational background please? A. I hold a BA degree in economics which I obtained in 1959 and I hold a PhD degree in economics from Brown University which I obtained in 1963.

Q. Have you been a recipient of any honors or fellowships? A. I guess some. I graduated Phi Beta Kappa and magna cum laude. I have held post doctoral National Science Foundation fellowship and two years ago I was made an honorary professor by the university—the major university of Bolivia.

Q. What works, if any, have you published? A. Well, let me try and mention some of the publications in which my works have appeared, *The Review of Economics and* (T. 340) *Statistics, The Journal of Industrial Economics, The Anti-Trust Bulletin, The Southern Economic Journal, The Canadian Economic Journal, Land Economics, Journal of the American Institute Planners, Public Utilities Fortnightly, The Oxford Bulletin of Statistics,* and probably a few others which I can't—

Q. What kinds of subjects have you written about in these publications? A. I have written on diverse subjects,

but many of my works have dealt with the areas in which I have done the research over the years, in the area of industrial organization; and the kind of topics with which I've dealt include profitability and size of firm, market concentration in advertising, issues relating to the exit of firms, that is, mortality of firms, the determinants of growth of firms and the like.

Q. Dr. Marcus, have you given testimony regarding the economic effects of state legislation? A. Yes, I have.

Q. When did you give such testimony? A. I appeared before an assembly committee of the New Jersey Legislature about a year—over a year ago, September of '74 I believe; and at that time I presented my views on the desirability of a statute which sought to restructure the retail part of the gasoline marketing industry.

Q. On whose behalf did you appear? (T. 341) A. Well, I'd like to believe that I've appeared completely independently, I've appeared at the invitation of the chairman of the committee, Mr. Baer, the same person who has requested Professor Berry to appear before him.

Q. What were the circumstances surrounding Mr. Baer's contact with you? A. Well, actually I was contacted by a legislative aide of the committee. I believe it was in June or May and was asked whether I would come and give my views on that bill. At that time I was told that the committee was going to hold hearings within a period of two or three weeks; and I stated that I just couldn't do any sufficient study to present my views and I declined the invitation at that time.

Q. What happened subsequent to that? A. I was subsequently approached and was told that the hearings were delayed until September; and that gave me somewhat more time and I felt that I could present my opinions on the bill in September; and I agreed to appear.

Q. Were you compensated for that appearance in that state? A. No, I received no payment for this—for my time.

Q. Have you ever testified as to the economic effects or consequences of other government industry related actions? A. Yes, I have done so on several occasions.

(T. 342) Q. What were the areas of that testimony? A. I have testified on areas relating to pricing and areas relating to what is a fair and equitable rate of return on investments and on the area of future market demands.

Q. Where did you give such testimony? A. Here again I'm not sure I would be able to remember all of these appearances but probably most of them. I've appeared in the State of Virginia and at that time I was retained by the Attorney General of the Commonwealth of Virginia. I appeared in Alabama. At that time I was retained by the government of Alabama on behalf of the State of Alabama. I appeared in New York State on behalf of a group of large corporations. I appeared in Massachusetts on behalf of the Attorney General of Massachusetts. I appeared in New Jersey on several occasions on behalf of or that is I was retained by Rate Counsel which is division of the Public Advocate in New Jersey, division of the New Jersey State Government representing the public.

Q. Professor Marcus, have you ever engaged in private consulting? A. Yes, I have.

Q. In what areas? A. Again in order not to take too much time, let me just concentrate on what might be the more representative areas (T. 343) of my work. Prior to 1969, no, about 1967 or so, I was retained as a consultant by Mathematica, which is a Princeton-based consulting firm, to do a study for the Department of Agriculture. That study was concerned with market acceptance of—a market competition of man-made fibers

and cotton; and my assignment was to looking to the determinants which influence this acceptance and make some projections.

Subsequently to that I was a special consultant to National Economic Research Associates, which is a New York based consulting firm, for a number of years. I have worked on an assortment of problems, usually relating to the question of structure of industry and its relationship to behavior, performance in competition. In that connection I've dealt with marketing competition, marketing penetrations. I've dealt with a question of structure of the television supply industry, that was a study that was done for the Office of Telecommunications Policy with a view of exploring policy options for that office.

Q. Thank you. Dr. Marcus, could you describe the circumstances surrounding your initial relationship with Shell which has culminated in your appearance here today? A. Yes. I believe I was contacted by you sometime in the fall of 1974 and I was informed that I would be subpoenaed to present the statement which I had earlier presented to the (T. 344) New Jersey Legislature. I was deposed subsequently to that; and after the deposition I was asked whether I would undertake a study to form a basis for an opinion concerning the Maryland statute. I agreed to do so.

Q. Did you know the context within which that deposition was taken? A. Yes, I understood that the Florida Legislature had passed an act which sought again to restructure the retailing segment of petroleum marketing and in that context I understood that my statement was going to be used.

Q. Were you compensated for this deposition? A. I think I got six dollars from somebody.

Q. Prior to your retention by Shell for purposes of

this litigation, had you ever been retained by a petroleum company? A. No, sir.

Q. Dr. Marcus, are you familiar with Chapter 854 of the Laws of Maryland? A. Yes, I am.

Q. Have you had sufficient time to study Chapter 854 of the Laws of Maryland in order to form a definite opinion as to its economic effects? A. Yes, I have given it quite a bit of time.

Q. Is your opinion based on a study? A. Yes, it is.

(T. 345) Q. What constituted the basis of your study? A. Well, broadly speaking, of course, my study has begun with days of graduate work and subsequent research on industrial organization. These are precisely the issues that the study of industrial organization is concerned with. Entry, pricing and the like, but I sought to gain some more specific familiarity with gasoline marketing and retailing in order to be absolutely certain about my position on this matter and the rationale for it. So I have over the good many months now and I would dare say that actually my first study began in preparation for the New Jersey statement, however, at that time I told the committee that my study was ongoing, it was a kind of preliminary and still somewhat hasty statement. I have proceeded from that day on to study the industry. I've done it through giving it more emphasis in my graduate courses in industrial organization; and subsequent to being retained by Shell Oil I have systematically reviewed the literature including the academic literature as well as Congressional committee reports that have dealt with various facets of gasoline retailing. I'm not quite sure I've been able to cover them all, but I had a pretty heavy stack of books in front of me. I have followed the trade literatures. I have received a continuous stream of documents and manuscripts from your office which I

have endeavored to review, some of them with greater (T. 346) care and others more casually. I have also visited with Shell people in Houston trying to understand in greater detail the operations; and I was also very curious to see some of the different operations that they told me they had in Houston and just about one day I was driven around to see various stations which have not yet been introduced throughout the country.

Q. Now, Dr. Marcus, would you as an economist describe the frame of reference within which you approached your study? A. Well, the frame of reference here I think the same frame of reference of Professor Levitt and Professor Berry is the kind of reference that economists do employ and that is is it in the interest of the market as a whole, not is it in the interest of a particular segment, particular participant, but will consumers, will the public be better off next year, five years from now or ten years from now. This was the frame of reference on my study.

Q. Assuming Paragraph C, Chapter 854, becomes effective how will it in your opinion as an economist affect retail competition within the petroleum marketplace? A. It will tend to affect it adversely. It will tend to lessen competition and competition is the means, the only means I dare say, that we know through which in the long run consumers will benefit. I, therefore, conclude that it will tend to adversely affect consumer interests in the area of (T. 347) pricing, in the area of product development, in the area of innovation, in the area of service variety. I'd like to emphasize that this is not a statement of idealogy. Competition may appear to be a simple term, but it is through competition that all these elements are enhanced and this is why I've noted that.

Q. Since it is your opinion that competition is a fundamental consideration in terms of your analysis, would you state whether you believe gasoline retailing to be competitive generally? A. I'd like to relate it first to retailing as a whole because gasoline retailing is a segment of retailing. It's not a unique area; and retailing is considered to be one of the more competitive segments in American industry; and the reasons for it are fairly simple. Retailing is characterized by a large number of competing firms. Second, entry into retailing is relatively easy, relatively compared with manufacturing, public utilities and the like, that makes it more competitive. These factors characterize gasoline retailing as well, but it so happens that there are additional factors which make gasoline retailing even more competitive than retailing as a whole.

Q. What are these factors? A. Well, competition will tend to become more intense, (T. 348) the more substitutable are the products. Now gasoline brands while they are not perfect substitutes in the mind of the public are fairly close substitutes and that renders competition more viable. Second, in order to—for consumers to take advantage of competition, in order for them to behave competitively they must have price information, they must know which seller is selling less and in the gasoline industry it is almost a unique industry where price information is distributed in the most efficient way. All you have to do is down drive—drive down, excuse me, and you don't even have to do it on purpose, on the way to work you get a very quick assessment of what are the prices which the market quotes for you. This is a second very important consideration. Third, in order for consumers to take advantage of the different prices, they have to be able to act quickly without much restraint, without

a great deal of burden. Here again it's almost a unique industry because the consumer in his car he can do the purchase while in his car, he doesn't have to park his car, go up to the fourth floor, find out what's the price and then act on it. For all these reasons gasoline retailing is indeed highly competitive.

Q. What are the benefits, if any, of this competition to gasoline consumers? A. Well, I think I've mentioned that before already. (T. 349) With competition there comes the benefits of lower prices, greater product variety, better service quality, service innovations, product innovations because all these things become tools in the competitive contest.

Q. Now I'd like you to take each one of those tools and state in your opinion as an economist how each would be affected by Paragraph C of the Maryland Act. First what will be the effect, if any, of Paragraph C on the price of gasoline? A. Well, the effect will tend to reduce the price because you will be affecting, you will be impinging upon the number of stations and more importantly upon or as importantly upon–

(The Court) You say reduce? A. I'm sorry, I'm sorry, Your Honor, I misspoke. It would tend to reduce price–competition and increase overall the level of prices. This is a predictable result any time we preclude competitors from the marketplace.

Q. What type of competitor would be precluded from the marketplace? A. Well, according to the statute producer-refiners would be precluded from the marke- place.

Q. Who are these producers-refiners comprised of? A. Well, there's been evidence presented before this court that this group encompasses very large producer-refiners (T. 350) and some very small price competitors, price

marketers. This group of producer-refiners would have to terminate operations under this statute.

Q. What is the importance of having this type of competitor in the marketplace? A. Well, here again I think we have to think about the meaning of competition. Competition again depends on the participants, depends upon what they bring to bear. If you're going to have more types of participants in it, you're going to bring to bear more variety in managerial points of view, in attitude to product development, in strategy and as you bring these to bear, you allow consumers to choose more and this process of choice is really competition.

Q. Dr. Marcus, do you have an opinion as to whether Paragraphs B and C will affect market entry? A. Well, there's been extensive testimony before this court and I will be very, very brief. It is going to influence–to bar rather the entry of producer-refiners, it would bar the entry of producer-refiners who might ultimately choose to operate through dealers if they feel that in order to establish themselves they must first operate through company operated stations; and it will bar the forward integration of companies who are currently in refining from moving into marketing and I am sure there are marketing firms which may (T. 351) at some point or another be in danger or which may feel that economically they should move into refining and under this statute as I understand it, they would be prohibited from doing so. The net effect of these influences is to reduce potential entry into retailing–of the retailing industry.

Q. Returning now to the factors you previously mentioned, how would type or the quality of service be affected by Paragraph C? A. Again to have variety, you've got to have variety in the types of participants. You have to have as many diverse participants. If you're going to

limit, you're going to cut off some types. You're going to influence it adversely.

Q. You've also previously mentioned innovations. What is the importance of innovations to the consumer in your opinion? A. Here again I think innovations sometimes may be thought of as a kind of gadget, new packaging and sometimes it is that; but economists have established in numerous studies that over the history of the United States innovations have been the so—I think the most important source of productivity gains and productivity improvements; and productivity is the vehicle through which cost cutting gets effectuated and cost cutting is the foundation for lower prices. So innovations are of extreme importance.

Q. Now then would the prohibition against company operated (T. 352) stations affect innovations? A. Well, innovations do not just spring by somebody sitting on a chair. Sometimes it happens but I guess companies just can't be—assume that this is a safe strategy. The—it has been established that companies which seek innovations have to engage in research and development activity, known as R and D. Some of this research and development activity becomes fruitful and gets translated into usable and useful innovations. I believe that both the R and D activity, research and development activity and the ultimate adduction of innovations will be adversely affected if one were to preclude a major participant from operating in the market.

Q. Would you be more specific at how research and development in your opinion would be adversely affected? A. Research and development is a gamble just like many other facets of business are. If it is a gamble, you undertake it if you have profit incentives. If this segment of the marketplace will no longer have the incentive in

the form of being able to use these innovations directly, it's only reasonable that they will curtail some of the R and D activities. Second, some of the innovations—some of the R and D work is inspired by realizing what the needs of the consumers are and if you're in direct contact with consumers through company operated stations. I think you get—you get the pulse of the (T. 353) consumer and you may direct your R and D staff to try and deal with these needs in the form of appropriate innovations.

Q. You mentioned adoption of these innovations. How will the adoption be affected by Paragraph C? A. Well, here again I think an innovation by itself is not sufficient because an innovation conceivably could sit on the shelf someplace. We want the innovations to put forth to be implemented, to be adopted and put to use; and I believe that by excluding a segment from the market the adoption of some innovations will be adversely affected; and the reason for it is plain. The frame of reference within which some innovations might be viewed is completely different as viewed by an established dealer who looks at it from the point of view of his local, specific market and as viewed by a marketer, and integrated producer-marketer who is concerned with a large number of stations. That particular firm is maybe more receptive to the risks that is involved in innovation because when you adopt an innovation, by the way, it doesn't mean it's going to be a success. It could be a failure; and then in another words an Edsel. Now who is going to make an experiment with something that could prove an Edsel or a Mustang; and I'm suggesting to you that if you are going to be preclude this segment of the market, we may be paying for it very, very dearly.

(T. 354) Q. Dr. Marcus, based on your study and as an economist do you believe that in the absence of this type

of legislation dealer operated stations will be largely replaced by company operated outlets? A. Not at all. I believe that dealer operated stations and the so-called conventional stations, neighborhoods, have very significant managerial and operational advantages; and I think the fact is that the bulk of service stations that are operated under major brands are indeed operated by independent dealers. These are the facts. The case of Shell, the number ot company operated stations is well under five percent. Now they were free to make these conversions and as Professor Berry very, very clearly demonstrated, they would have done it if it were in their interest. Now it's not in their interest to do it as long as the dealer is performing efficiently and the economics of retailing are such that dealers have a very significant place; so I consequently do not foresee this happening in totality in gasoline retailing.

Q. Are you suggesting that no company will switch from dealer to company operated stations? A. No, I'm not suggesting that either. The marketplace is a dynamic arena. At any one time some firms are going to do well and some firms are going to do poorly. Yesterday we heard testimony from Commonwealth that they are presently (T. 355) operating at a loss. Now this is really competition. It's not a race where everybody ends up in the same place. Now if you start with understanding of the marketplace in these terms, I think it becomes clear that at some point some participant who is doing poorly in this particular area and using this particular mode of operations is going to try and do something else; and he may very well try and move in one direction of another; but this should not be construed to mean that this is where we are all heading. I think it's a kind of ongoing jockeying, if you will, experimentation that a dynamic market must have.

Q. Dr. Marcus, as an economist, do you believe it desirable to protect or shield any segment of the market from competiton? A. Again I think I've answered that implicitly in what I've said. If you're going to offer protection, you are essentially working against the concept of competition. You cannot have competition, that is you don't have economic competitive pressures of participants if they know that they're going to be protected. So I think we've got to accept the notion that under competition there cannot be protection to the participants.

Q. Briefly concentrating on the use of company operated outlets in the gasoline industry, do you know whether or not company operated outlets are also used in other industries (T. 356) that also utilize dealers?

(Mr. Woodstock) Objection, Your Honor. I believe the witness has already testified that there are certain unique qualities about the competition within the retail marketing of petroleum products so I fail to see the relevancy between other areas of competition. He's already designated it as a special area with special qualities.

(Court) Well, he says a certain unique qualifications. He doesn't say it is unique. Unique as I understand it is the pluperfect and permits it no other. He said certain unique qualities. So I'll let him answer.

Q. You may answer the question. A. Actually when I undertook the study, this is one of the things I wanted to see because is this kind of provision going to render gasoline retailing to be entirely unusual in American industrial experience; and I found out a publication that is issued annually by the Department of Commerce of the United States. That publication reports on the major franchising industries. In fact they say they cover all the franchising industries of any consequences; and it then

reports the breakdown between company operated outlets and dealer operated outlets; and it is significant that in each and every one of the industries which are included in this survey, there are company operated stations (T. 357) alongside dealer operated stations.

Q. What is the significance in your opinion of your testimony with respect to the utilization of company operated outlets? A. I think the significance is that there is something about the economics of retailing and it is probably the diversity of conditions in the marketplace in retailing which requires that there be both company operated stations and dealer operated stations; and the proof for that is that each of these industries has in fact resorted to them. If gasoline retailing were to be precluded from it, it would be the only exception among this list of industries covered by the Department of Commerce.

Q. Would you please summarize briefly your opinion with regard to the prohibition of company operated stations set forth in Paragraph C? A. Well, in order not to take time of the court, let me not really summarize but just express my overriding concern here. My concern is that this Act seeks to restructure an industry. I've already pointed out as have the other expert witnesses, Professor Berry and Professor Levitt, the immediate areas of concern, the immediate costs that may be born by the consumers, but I think more broadly a restructuring of an industry has—can have very, very far-reaching consequences (T. 358) because we do not have information that used to be supplied to us by the marketplace; and let me illustrate that that we had a couple decades ago in one way or another frozen the retail structure say of tire distribution, would we have known today the consumers prefer to obtain their tires at department stores, variety

stores, mail order houses, dealers, new car dealers, a whole variety of areas which keep on expanding or shrinking depending upon consumer preferences; and I submit to you that we might not have known because there would not have been any options for the consumer to express his preferences. So my overriding concern is that we might be just doing that. We might be phasing out at enormous potential costs a segment of this industry.

Q. Would you be less opposed to this type of legislation if told that the Legislature can repeal the Act if it doesn't work out? A. Well, in theory that sounds all right and if legislation and social and economic activity could be carried out in a laboratory, I suppose this would be nice to observe and we could then, you know, turn back the experiment and bring the temperature down to the level where we started. I'm afraid that in economic and social organizations realities change and as they change, you may never be able to come back exactly to the point where you started. We've heard testimony (T. 359) here that some participants in the marketplace do intend to discontinue operations if the bill becomes effective. So this will be an economic fact which will have all kinds of consequences on employment, on property. Could we at some point in time restore them? They will have made other plans. We've heard testimony that Gulf has already modified its plans and is not at the moment entering into the market. This is again a consequence so what I'm suggesting here is that on the one side in my view we have the bill which offers no benefits to the public, very, very grave costs may be coming through that bill and consequences that based on accepted economic theory, accepted practices in American industry are entirely undesirable.

(Mr. Abrams) Thank you very much, sir.

CROSS EXAMINATION,

By Mr. Woodstock:

Q. Dr. Marcus, good morning, my name is John Woodstock, representing the State of Maryland.

I believe you said on—you testified on direct that you appeared for the State of Virginia, the Attorney General's office. Was that Attorney General Miller, Andrew Miller? A. I—his assistant is Walter Marston, Jr. and I believe yes, I met Mr. Miller. I was introduced to him.

Q. In what connection or what capacity did you assist him? (T. 360) A. That was on the fair and reasonable rate of return to the Chesapeake and Potomac Telephone Company in the State of Virginia.

Q. Approximately when was that? A. That was I believe in April of this year.

Q. I was sort of interested in your first connection with testifying with regard to the oil industry. I think you said in the fall of '74 you were first contacted by Shell. Is that correct? A. I believe so.

Q. And I believe you said that or maybe you can refresh my memory here. What was the nature of that contact? A. It was sometime September, October, November, December of '74 and I was told that I was going to be subpoenaed to present the statement.

Q. Did they serve you with a summons? A. Yes, there was.

Q. Where was that summons issued from? A. New Brunswick, I believe.

Q. And your deposition was taken, is that correct? A. Yes, sir.

Q. Who was present at that deposition? A. Mr. Abrams, a court stenographer.

Q. Was anyone present from the State of Florida? (T. 361) A. No, sir.

Q. And you were requested at that time to perform a study, is that correct? A. No, sir.

Q. No? A. I said that I subsequently was requested to perform a study.

Q. At what time frame if you can give me some idea? A. Oh, I don't think it was until February that I was really retained and maybe a couple weeks before that I was approached on it.

Q. So your testimony has been a deposition was taken either September, October, November or December and that you were subsequently requested to do a study which commenced perhaps February— A. That is—

Q. So it could have possibly been two months or six weeks after the deposition. A. It could have been.

Q. Did you appear in the Florida case to testify? A. No, sir.

Q. When did Shell retain you for this litigation? A. I believe at about February of '75.

Q. February of '75. (T. 362) A. Yes, sir.

Q. Which was immediately following your deposition in the Florida proceeding, is that correct?

(Mr. Abrams) Objection, Your Honor.

(Court) What's the objection?

(Mr. Abrams) The witness testified that it was not immediately following. It was six weeks to two months after that deposition.

(Mr. Woodstock) All right, I'll rephrase the question.

Q. That was within two months after your deposition in the Florida case? A. Approximately.

Q. And did they retain you as a private consultant for them in this litigation? A. I believe that I was retained as a consultant.

Q. And at a fee, sir? A. Yes, sir.

Q. What's the amount of that fee? A. It's four hundred and fifty dollars a day for an eight hour day.

Q. How many days have you logged in preparation for this case? A. My study to date approximately twenty-five, thirty days.

(T. 363) Q. And that was a study that wasn't introduced, I believe. Is this the study you're speaking about? May I hand you that? A. No, sir, this is not the study that I've done for the—over the year. Is that your question, Mr. Woodstock?

Q. I'm asking you about the study that you were requested to do by Shell. Is that in printed form anywhere? A. No, this is one of the work sheets that I've had and I've had several of them; and this was prepared with a possibility that it might be introduced.

Q Have you prepared any other reports for Shell on the preparation of this trial? A. Mr. Woodstock, this is not a report.

Q. Well, I'm asking if you have prepared any reports for Shell. A. Oh, I'm sorry. I thought you said any other. Any reports? No, I've prepared no reports.

Q. Did you provide them with any statements? A. No, sir.

Q. I believe you testified that in seeking to get more familiar with the gasoline industry for a good many months that as part of your preparation for this case you went down to Houston, is that correct? A. Yes, sir.

(T. 364) Q. Where did you go in Houston, just Shell Oil Company Headquarters? A. We met at the Shell headquarters, yes.

Q. And I believe you said part of that was traveling around Houston and viewing various types of stations? A. Yes, sir.

Q. Was there anything unique about these stations or any other reason why Shell might wanted to have shown you them? A. Yes.

Q. Would you tell me what the unique quality or characteristics of those stations were? A. The stations I had seen I have never seen before anywhere in the country. That doesn't mean that I have travelled throughout the country, but I saw self repair stations and I saw them in operation. I was talking to the supervisor in charge of this and it was quite a very interesting concept where individuals will be coming, renting space in the station and performing their own repairs. I saw equipment designed to allow consumers to replace their oil in the car without their constant attendance. I would have loved to be able to use that in New Jersey. I understand this may be one of the innovations that may or may not work out, but I saw it working in an experimental station. I saw various considerations of (T. 365) self service stations. I saw some of them trying to sell some groceries on the side, film. I really got the feeling of the ongoing attempts on the part of Shell to make it true offering a better product makes better service range to consumers.

Q. Vis a vis, would you characterize that as research and development? Is that a part of Shell? A. This is the laboratory equivalent of research and development that you find in manufacturing companies.

Q. Anything prohibit Shell Oil Company or any other similarly situated major oil company from putting that type of operation or these innovative concepts into existing dealer operated service stations? A. Some of these could undoubtedly be put in dealer operated stations.

Q. Let me ask you about some. How about partial self service? A. Now that I can't answer because the partial self service I don't know the economics of this.

Q. Are you familiar with the market in Maryland of

retail service stations? A. I have studied a great many of the facts.

Q. Does Shell have any partial self service stations in the State of Maryland? (T. 366) A. I'm not certain.

Q. They do. I believe it's also in the pretrial order. Are you familiar with the contents of the pretrial order? A. Your term familiar is—I'm afraid of it. I have reviewed some parts of it. I don't know what familiarity means here.

Q. Do you know the particular facts of your client? A. Facts of—were important but please remember, Mr. Woodstock, that my assignment was not to study the operations of Shell. My assignment was what is my view of that particular Act.

Q. Would it be possible for them to put into conventional service station to make a bay available for a consumer to come in and fix and repair his own car? A. It may not be possible either. May or may not and some of the reasons why it may not be possible is that some of these operations may not be attractive to dealers. Some other innovations that may be coming upstream which are not yet known may not be manageable by dealers for various reasons so my answer to this is some of them could and some of them couldn't. I certainly don't want to see those that couldn't be shut out by these service stations.

Q. You say it may not be attractive to a particular dealer, is that correct? Isn't that what you said? (T. 367) A. May not be.

Q. Well, whose decision should it be whether or not it goes into that particular location if that individual dealer who finds it unattractive has been at that location and is there under an existing lease agreement? A. I'm afraid the question is not very clear to me.

Q. It's very simple. Should Shell have the final decision to implement that innovation at that station or should the independent businessman who is operating it? A. Depending upon what innovation and what are the terms. I think an innovation is a broad term. It goes all the way from a new jet engine, a new aircraft to something that the stores have described as the brakes.

Q. Sir, I have given you a very specific exxample and I'm talking about opening an existing bay with equipment and tools there for a consumer to fix or repair his own car or to provide a area in there to unscrew his own nut and change his own oil. A. And what is your question?

Q. Who should have the final decision as to whether or not that new innovation should be implemented in a Shell leased dealer service station? A. Mr. Woodstock, to the best of my knowledge dealers are free right now to set aside a bay to tun—to cons mers and (T. 368) the reason they probably don't want to do it is that they can make much more money by performing the services in their own way.

Q. So the consideration as to whether or not it's particularly attractive to any dealer doesn't really mean anything? A. It's his decision then. Some of these innovations could be adopted by dealers with no problem at all. They're on the market.

Q. How about a gas only station? A. What about it?

Q. Could in your expert opinion— A. What is your question? I'm sorry, I don't—

Q. In your opinion could that be operated by a dealer lessee as opposed to direct company operation? A. If it is economically desirable for him to operate, but a dealer—but a gas only operation as I've heard here from president of Kayo and as I've heard from yesterday from

PMC they maintain—these are the people who run these operations. These are the people who sweat it out and they maintain that they can't do it with dealers.

Q. Again I ask you your familiarity with the Maryland market. Are you familiar with a company such as Crown Central Petroleum in Maryland? (T. 369) A. I'm aware of their existence in the Maryland market.

Q. Are you familiar with their percentage of sales over the last five years in the State of Maryland? A. Yes.

Q. What does that reflect to you, sir? A. It reflects to me that the marketplace is big enough, yet diverse enough to allow some operators to do it one way and some other operators to do it in another way. It's the only conclusion that I would draw from that.

Q. You're familiar with Hess Oil Company, too? A. Yes.

Q. Are you familiar with their operations in Maryland? A. I believe so. I have an idea.

Q. Do they operate through dealers? A. Well, there was a legal squabble the other day when this question was raised and if I'm—one thing I'm not is a lawyer and somebody said that the underlying terms they are very—I heard all kinds of terms like commission agent, but let me try to answer it as an economist. Here again what you're doing here is you're selecting participants when you say hey, he's operating this way. Can't everybody operate this way? If everybody tried to operate this way, then he couldn't and the only reason one person can do it this way is the others are doing it in a different way. This is the essence of the (T. 370) diversity in the marketplace.

* * *

(T. 375) Q. Dr. Marcus, as an expert, what advantages do you see to direct owned, company owned and operated station by the major oil companies upon price

competition in the State of Maryland? A. Here I don't—this is one area where I do not believe that there are considerable advantages, that is, if you talk about direct owned by the major brands; and the reasons for this have been stated in my testimony in Jersey. I believe that the major oil companies are not going to use (T. 376) their company operated stations in a cut-throat competition with established dealers and consequently I do not believe that the thrusts of price competition to company operated stations will take place from the major owned, company operated stations, but I think the producer-refiner category includes other participants, very important participants which have been identified for this court and they are a very important factor in price competition.

Q. To what extent have you examined all the actors in the universe, if you will, of mar—petroleum marketing to distinguish various characteristics about their price marketing activities? A. I have done my best to become sufficiently familiar with the groups and categories of participants to form the opinion which I've just expressed.

Q. Do you find there are different sub-classes amongst the producer-refiner category as to their competitive behavior on price? A. I—even I was able to observe that Hess station traditionally sells under the major brands. Crown sells under the major brand. They are producer-refiners. There is no question that you're dealing here with different types of retailers. The Crown, the Scots, the Kayo have made it clear that they do not try and compete over the (T. 377) entire range of services. It would be suicidal for them to do so; so why would they mention the competition that they choose to emphasize or may be forced to emphasis under market conditions is price.

Q. Are you familiar with any non-producing refiners independent retail service stations dealers in the State of Maryland or in the State of New Jersey or in your travels around the United States? A. They're all listed in the pretrial order and I–

Q. Are you particularly familiar with them? A. I have seen them, yes.

Q. How about are you familiar with their pricing pattern? A. Again I think it is clear that they constitute an important factor in pricing competition.

Q. Are you familiar with their pricing patterns, sir? A. I am familiar with the fact that they are a competitive force in the gasoline retailing. Pattern is a term which–do you mean a historical product pattern, a regional pattern. I'm a little bit uncomfortable with it.

Q. We'll start with an historical pricing pattern. A. Well, again as an economist it is very, very clear that these marketers had to continuously compete in the marketplace. They had to emphasize another dimension, perhaps (T. 378) they had to emphasize price more because they weren't giving other services. The point of the matter is that in the marketplace there was a segment for them and they had some bad years I understand and some good years.

Q. You see a difference between the way they marketed and emphasis on price as opposed to perhaps other qualities of marketing demonstrated by the major integrated oil companies? Historically? A. I'm afraid I've not studied the broad question which groups all marketers in one category and relates to the entire history and ask me to summarize the entire history. There have been various periods, various regions, various marketers. I'm just unable to answer the question the way it has been posed.

Q. You were here yesterday Dr. Levitt, I believe,

testified to a wheel of retailing concept. Are you familiar with that concept? A. I'm familiar with the concept. I haven't quite seen the wheel but–

Q. Are you familiar with it as it pertains to the petroleum industry? A. I think the concept again is universal as Professor Levitt pointed out. It is the motion that the wheel turns. By the way I would have added to it the wheel sometimes turns (T. 379) forward and then may turn backwards. It's not always a continuous motion in one direction. I think what he was trying to say is that there are great dynamic changes and look, the best illustration for that is is that in the 1930's the oil companies were virtually, entirely operating through company owned stations; and now we're talking about a situation where the major brands are operating almost entirely and predominantly through dealer operated stations. There was no government statutes which lead them to do it directly, which caused them to diverse themselves, but there are plenty of opportunities to go back to that. I think one has to approach the marketplace with a great deal of respect for the uncertainty, for the dynamic conditions and I'm frightened to have the law just freeze a segment of it.

Q. Doctor, in your opinion does vertical integration increase the number of competitors in the market? A. Question–Mr. Woodstock, I don't have enough information to answer you.

Q. Generally speaking in the petroleum industry where you have witnessed and examined vertical integration, has that resulted in increased numbers of competitors in the marketplace?

* * *

(T. 381) Q. Confining yourself to the State of Maryland and as a result of your studies of the Maryland market, has forward vertical integration resulted in an

increase in the number of competitors in the marketplace selling gasoline to the consumer, public? A. Mr. Woodstock, if we have a situation, we have one oil company selling to an independent dealer and you now tell me that this particular consideration has changed, that the major oil company has—is now directly operating a retail firm—the retail end of it, under this configuration you previously had two units, you now have one and I don't think this by itself has any bearing to competition in the marketplace.

Q. Sir, I think you've repeatedly testified this morning one of the essential elements to healthy competition is the diversity of that marketplace and an ingredient of that is the number of competitors. A. That's correct.

Q. Now I still don't believe I have received an answer to my previous question. A. I really—

Q. Unless you're saying that two into one means a reduction.

* * *

(T. 382) A. Well, yes, if you had two before, this is the universe, this is the reality, no other consideration into account and the two merge into one, we have one.

Q. Does it help the general concept of competition to (T. 383) have a large or a small number of price decision makers in that marketplace? In the sense that that price decision maker relates to making an offering to the consumer? A. I think it's very important to have a good number of participants, but I think it would be erroneous to assume that every time you add one you make a market more competitive and any time you remove one you necessarily make it more competitive. I think it's not a continuous kind of change. So my answer to your question is yes, we need a good number of competitors but it does not follow that any time you remove one you have necessarily adversely affected competition. If you

had only two competitors and you removed one, you've got an monopolist. If you had two hundred and you removed one or two or three or five, may be entirely different, but it also depends who you are removing, you're removing a particular type and again you have exerted influence on competition. So I'm afraid it's a most complex question.

Q. Doctor, I believe toward the end of your testimony you said that something to the effect that your main concern over this bill's effect would be that we haven't had enough time and opportunity to find out or study and find out what we would be doing and it's a fear of what might happen. I may be restating that wrong, maybe you can restate for me. A. No, I'm sorry it's not correct.

(T. 384) Q. Okay, please restate what you said. A. It is not a correct understanding of what I tried to say. I first of all have emphasized very specifically the areas in which I believe consumers would be adversely affected and I've listed a good number of them. I then pointed out that in addition to that, quite apart from that, the restructuring of an industry has—is an extremely risky undesirable and this is a conclusion that we draw from looking at the history of retail activity and the court heard examples about changes in super—from grocery stores to supermarkets, the evolution small apparel shops into department stores and discount stores and the like. What I'm suggesting to you that if somebody in the 1920's had tried to say to the little grocery people, hey, we've got a beautiful, brand new supermarket, who needs it, what we going to do for us. If we had adopted this particular strategy, the costs would have been enormous; and I thoroughly suggested, further suggested that we are not doing it in other areas of the economy and I see no reason for doing it in gasoline retailing.

Q. So the danger is that the bill attempts to restructure an industry? A. This exclusion of a segment of an industry amounts to restructuring its nature and characteristics, yes, sir.

Q. To the best of your knowledge, has the—any of the (T. 385) large segment of the petroleum industry ever been restructured by governmental action? A. Restructured in terms of prohibiting entry of a particular segment, prohibiting operations in a particular area, prohibiting a mode of corporations, to the best of my knowledge, I'm not familiar with any, no, sir.

Q. How about the divestment of various segments of that industry? A. I think divestments—well, first would you please tell me in what—

Q. Divestment of—are you familiar with any governmental actions historically which required the divestment of certain portions of the oil industry in this nation? A. As I understand divestment, in cases where I've seen it effectuated, it is a remedy that the law has, very specific—under very specific circumstances where it is called for, where there has been determination that the particular firm and I'm talking here of the distinction between a firm and restructuring an industry, so where a particular firm has engaged in some form of violation of anti-trust laws or FTC laws, I believe this is a remedy that the law has.

Q. That's the test of your knowledge as far as regarding the concept of divestment. Are you aware of any (T. 386) other legislation which calls for divestment or called for a divestment of particular aspects of any industry in this country without finding specifically they were violating the antitrust law of the United States? A. I'm aware of one. The New Jersey bill, which, of course, was not acted upon after the hearings, but I would not

presume to be aware of any—all bills of legis—of any legislature or Congress seeking particular remedy or particular proposals, I couldn't conceivably know of all of them.

Q. As an economist and I believe you testified as to—you're an economist and also you have a relationship with industrial organization, would you give me a little bit of background on that again. I have some notes here but they're not that good. A. Well, I would like to believe that my expertise is in the area of industrial organization which is the study of the relationship between the structure of industry and its behavior in the marketplace and its ultimate effect on consumers.

Q. Wouldn't you consider part of your required knowledge to make an economic evaluation and advise an industrial organization an awareness of whether or not certain economic conduct could even be undertaken? A. I'm not an evangelist going around offering advice (T. 387) to any particular, unspecified action. I don't understand the thrust of it. What—where have I been asked to do what which I have refused to do?

Q. As an economist, can you conceive of any situation where legislatively imposed divestiture of an industry would be appropriate? A. Mr. Woodstock, a legislature may have all kind of reasons, may sometimes be right and in my humble opinion sometimes it is not right—

Q. I'm asking you for your viewpoint as an economist, not a legislature, I don't believe you've been elected. A. No, as an economist I also have an opinion about—now the complexity of economic situations is so enormous that to ask me is there any situation under the sun under which this might be necessary is really a task that I can't handle. I mean it—if you care to specify a set of circumstances, I would do my best to answer it.

(Mr. Woodstock) I have no further questions of this witness, Your Honor.

(Mr. Abrams) I have no questions, Your Honor.

* * *

(T. 396) CHARLES J. LUELLEN

a witness of lawful age after being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Drogula:

Q. Will you please state your full name, sir? A. My name is Charles J. Luellen.

Q. What is your current position with Ashland Oil? A. I am a group vice president of Ashland Petroleum Company, division of Ashland Oil Inc.

(Court) Excuse me, sir, how do you spell your last name? A. L U E L L E N.

(Court) Thank you, sir.

Q. What are the duties of your present position, Mr. Luellen? A. I have responsibility for all sales of gasoline made by Ashland Petroleum Company, most of the distillate fuel (T. 397) oil sales and all of the asphalt sales for the company.

Q. And how long have you held that position? A. A little over three years.

Q. Prior to that period of service, would you please give us a brief outline of the other positions you have held with Ashland? A. Yes, I began working with Ashland in 1952 beginning in a training program which involved work in the refinery, in terminals, in service stations, in sales offices; and between 1953 and 1959 I served as a sales representative in several sales territories. 1960 I was transferred to a subsidiary company, Louisville Refining

Company, as a sales representative and I left that company in 1967 as vice president of sales and distribution. 1967 I moved to company headquarters in Ashland, Kentucky where I served for about three years as an assistant to our board chairman. In 1970 I became vice president of branded marketing where I served until I assumed my present duties.

Q. Do you belong to any organizations within the petroleum industry? A. Yes, sir, I'm a member of the American Petroleum Institute and I'm currently serving on two committees. I'm the director of the Asphalt Institute and have been involved in several committee assignments there.

(T. 398) Q. Will you please give to the court a brief description of Ashland Oil as a company? A. Well, it's a diversified concern with operations in all phases of the petroleum business. In addition we have a highway construction division, a division that produces and sells coal, and a division that manufactures and sells various chemicals.

Q. Focusing your attention on the petroleum activities, is that handled by a specific subsidiary or division? A. Yes, Ashland Petroleum Company.

Q. And would you please give us a little more specific information as to the petroleum activities within that company? A. Well, as you stated, we operate seven refineries, two in Kentucky, two in Ohio, one in New York, one in Pennsylvania and one in Minnesota. We run approximately three hundred eighty-five thousand barrels per day of crude oil, that's the capacity of those refineries. On crude oil, that, as you've mentioned, is purchased largely from other producers. We are involved in all phases of transportation, both crude oil and finished products; and we sell our products at wholesale, at retail, the entire range.

Q. Focusing on your refinery operations, how many barrels or throughput which you mentioned, three hundred and (T. 399) eight-five thousand barrels a day, was attributable to crude oil which Ashland owns or controls? A. About fifty thousand barrels per day, which is our worldwide production.

Q. Would you explain to the court how Ashland goes about obtaining the additional crude oil it requires? A. Well, we must buy it in the open market at the prevailing prices; and we do so from a variety of sources including major oil companies, independent domestic producers, foreign national oil companies, so we cover all phases.

Q. It it correct to characterize Ashland Oil as an independent refiner? A. Yes, sir.

Q. Would you please indicate how that term is used in the petroleum industry and what it refers to? A. Well, it's widely taken to mean a refiner who controls less than thirty percent or who owns less than thirty percent of the crude oil he runs through his refineries. In our case it's about fifteen percent or slightly less. It's also taken to mean or it has as varying form the method of gasoline marketing. In that sense we also are independent oil company and that we rely largely upon independent private brand marketers, both our customers and our own direct operated stations for the sale of our gasoline.

(T. 400) Q. Does Ashland's crude deficiency cause in any operational problems in the area of supply or the area of price? A. Yes, sir, we have to operate, of course, at a crude oil cost disadvantage compared to many of our competitors; and so it's always been a handicap, however, it's one that we are able to live with and prosper through most of our history and became a very serious problem, of course, during the shortage and subsequent rapid increase in crude oil prices.

Q. I'd like to focus your attention on the period which you referred to as a period of shortage. Approximately what period of time did that cover? A. Well, it began in 1972 and continued on through early 1974.

Q. Did the absence of crude oil affect the runs at your seven refineries? A. Yes, it did. They were sharply reduced particularly during the embargo period which was October 1973 until March '74.

Q. Mr. Luellen, I'd like to nand you a document and ask you if you can tell us briefly what it is.

(Mr. Drogula) Your Honor, may I hand a copy to the court?

(Court) Yes, sir.

A. Yes, sir, this is a graph showing our refinery runs beginning in October 1973 through July 1975.

(T. 401) (Mr. Woodstock) Your Honor, I'd like to object to it and question the relevancy of his testimony with regards to the statute being challenged in this litigation.

(Mr. Drogula) I would be happy to respond to that, Your Honor.

(Court) Go ahead and you can tie it in.

(Mr. Drogula) We have heard Mr. Woodstock examine the expert witnesses and certain of the company witnesses at length on the question of vertical integration; and I believe that this document bears directly upon showing that Ashland is not a fully integrated, major oil company. Not only that the fact that it is crude deficient costs is more in the role of an independent gasoline marketer as I believe you will see when we get into the State's own case. I think the fact that Ashland itself was injured during the crisis indicates that it was one of the members of the class to be protected rather than among the members of the class to be legislated against. This

chart dramatizes how vulnerable Ashland is to the world crude oil supply.

(Mr. Woodstock) May I respond?

(Court) Yes.

(Mr. Woodstock) Doesn't appear to me that our statute in any way affects the crude supply of any company. Secondly the basic facts of Ashland's operations have already (T. 402) been stipulated to and a part of the record as part of the pretrial order; and this extensive affidavit from an FEA official which also discusses this aspect of the petroleum industry.

(Court) Well, I think counsel is trying to indicate to the court at least as we know that if it can be shown that a particular class of citizens or organizations or any particular class may be particularly segregated; and all members of that class treated equally, then laws applying to that class do not necessarily have to be deficient on the question of due process. Now as I understand the thrust of Ashland, it's attempting to show that it does not necessarily belong in the class of a major refinery and it shouldn't be included in this—in the prohibitions of this Act; and I think they can do that.

(Mr. Woodstock) Your Honor, if I may make one last point that the bill in question does not use a classification of major or minor producers or refiners. The classification is very broad in that sense and all encompassing; and when they filed their Bill of Complaint for the purposes of standing, they said we are a producer-refiner; and I assume the facts I believe as to whether or not they are affected by the bill within the classification is obvious on the face of the pleadings.

(T. 403) (Mr. Drogula) I believe, Your Honor, an issue in this case is the rationality of the classification. If a state legislature in the exercise of its police power drags

its not too broadly and includes within the class individuals or companies who do not reasonably belong there upon any rational set of economic facts, then the classification is arbitrary and must fall. As the court anticipates, we do seek to indicate to the court that this statute makes utterly no economic sense as to independent oil companies because without the crude production they lack the capacity or the potential to injure any other class in the petroleum industry.

(Court) Overrule the objection.

Q. Mr. Luellen, directing your attention to the document which I just handed you, would you please interpret for us the apparent decline which appears in the latter part of 1973? A. Yes, as a direct result of the continuation of the effects of the shrinking availability of domestic and foreign crude which occurred prior to the embargo and then the very drastic reduction which followed the embargo, which as I said began in October and ended the following March.

Q. What was—what were the consequences of that decline in crude oil supply upon the company? A. Well, it was very drastic because our refining business is one which relies very heavily upon incremental (T. 404) barrels where there is one operating its plant at maximum output; and so immediately we had to reduce refinery runs which reduced to the most profitable barrels available to us.

Q. What impact did reducing your refinery runs have upon your retailing operations? A. Of course, it had the effect of reducing them.

Q. Was that the case with respect to both branded and unbranded marketing? A. Yes, sir, it was.

Q. Mr. Luellen, does Ashland engage in the sale of branded gasoline? A. Yes, we do in a very small area

adjacent to our principal refinery at Catlettsburg near Ashland, Kentucky. We market as a conventional branded seller in a small portion of southern West Virginia, eastern and central Kentucky and extreme southern Ohio. The total sales of gasoline through those outlets account for about only eight percent of our total gasoline sales.

Q. Are those stations in those areas which Ashland markets through branded outlets dealer or company owned outlets? A. They are dealer operated outlets almost without exception. Fewer than six are company operated.

Q. Why does Ashland confine its sales of branded gasoline to the areas which you have just mentioned? (T. 405) A. Briefly because that kind of marketing is totally dependent upon brand image or brand recognition. Involved in brand recognition is great expense and years of effort, much advertising must be done, a great market penetration must occur, that is, there must be many stations so that the consumer is frequently exposed, a credit card system which is an extremely expensive to operate and must be developed and administered; and we simply have not had the resources over the years to develop that kind of system and then operate it profitably.

Q. Has Ashland attempted to market branded gasoline outside the geographical areas you have just mentioned? A. Yes, we have. We planned to enter markets adjacent to the three-state area that I just described and did so. For example; after we had established some branded outlets, business in Pennsylvania, in central and northern Ohio, we next tried to develop that kind of business in Michigan and we began that effort in about 1957. 1953, excuse me; and for seventeen years we stayed with that effort. We did not have very much money to spend on it, but yet we spent well over a million dollars and in 1970

we concluded that we absolutely could not earn a return on our investment and so we withdrew from that effort entirely. During that entire time we never had as much as one quarter of one percent of the total Michigan gasoline market running through our branded (T. 406) service stations so we not only and we lost money as it relates to that, something over a half million dollars during that period of time from operational losses. In addition to that, of course, we were deprived the use of that over one million dollars in capital which could have been applied to a more efficient, economical mode of operation.

Q. As a result of that, Mr. Luellen, how does Ashland market gasoline in parts of the country which are beyond its home territory? A. We sell gasoline at retail to our company owned, company operated stations which are identified by the names other than Ashland and whose style of operation is that that emphasizes low price, limited services, no TBA operations, no service bays, no dealers, we operate them direct.

Q. What is it about unbranded marketing that makes it easier for companies such as Ashland to penetrate distant markets? A. Well, it's a type of marketing that can be—a type of market that can be entered easily because it isn't necessary to have the credit cards, the advertising and the brand acceptance. The appeal to the consumer is obvious, its price and limited fast service and so it's easy to enter.

Q. You mentioned that Ashland operates in distant markets through company operated stations, is that a uniform policy (T. 407) A. Yes, it is.

Q. What are the reasons that Ashland chooses to operate those unbranded marketing facilities as company operated stations? A. We must have control of the basic elements of the operation. The basic elements are quite simple and they are price, appearance, housekeeping and

hours of operation. We cannot do that by operating on any basis other than direct.

Q. Mr. Luellen, does the existence of company operated stations have anything to do with the success or failure of your refining operations? A. Yes, sir, it does. We sell approximately sixty percent of our gasoline to wholesale customers who typically are resellers who own their own stations, resell the gasoline they purchase from us through their own stations. These people are totally independent of us. We have enjoyed their business for many years, however, they have no obligation to us to continue buying from us. We have no investment in their business. We have no contracts with them and there's no written contracts with them; and so those people can leave us at any time and frequently over the years they have left us for various reasons but most frequently to avail themselves of lower price and so in order to expand our refineries we found it necessary to ensure ourselves of a certain nucleus (T. 408) of controlled business such as we achieved with our direct salary operated stations. So in order to assure ourselves of continued high optimum refinery runs, we must have that nucleus of direct controlled business.

Q. Were those policies borne out during the recent fuels crisis? A. Yes, sir, they were.

Q. Would you explain how the presence of company owned stations assisted Ashland during that period of time? A. Well, after the rapid escalation of crude oil costs when our costs rose from roughly three and a half to eleven and a half, twelve dollars per barrel, of course, our gasoline prices had to be increased radically also; and so our independent customers whom we have no tie on as I mentioned were free to leave as for other suppliers and frequently did.

Q. What would have been the consequence at that

time had not Ashland had these company operated stations? A. The consequence certainly could have been, undoubtedly would have been that we would have had to make the decision to reduce refinery runs.

Q. What would that have done to the economics of your refinery operations? A. Would have been very damaging, of course.

Q. Mr. Luellen, in the presence of company operated stations (T. 409) relevant to the fact that Ashland is an independent, crude deficient refiner? In other words do the operation of company stations assist you because of your status in the industry? A. Yes, definitely.

Q. Would you explain to the court how that—

(Mr. Woodstock) Objection, Your Honor. I don't think the witness is qualified to speak for every other independent refiner who may or may not have retail service stations; and I have no idea what the universe is in that category. I don't believe there's any testimony to that effect on the record; and I—if counsel would rephrase the question limiting it to just Ashland.

(Court) All right, rephrase the question.

Q. Mr. Luellen, in what way is the presence of the company operated stations of value to Ashland given the fact that it is a crude deficient, independent refiner? A. It gives us protection against loss of uncontrolled business and thereby enables us to maintain our refinery runs at maximum levels.

Q. Directing your attention, Mr. Luellen, in the period of time encompassed by the so-called fuels crisis, did Ashland experience significantly higher crude acquisition costs than major integrated refiners? (T. 410) A. Yes, sir, we did.

Q. I'd like to hand you a document, Mr. Luellen, and ask you if you can tell us what it is. A. This is another graph showing the average crude oil costs of Ashland by

the month beginning in March 1973 continuing through December 1974 on one line and the other line shows the crude oil costs of major integrated refiners. The source of data of the other companies, incidentally, is the Federal Energy Administration.

Q. Mr. Luellen, what is the significance of the fact competitively to Ashland that during that period of time it experienced a crude cost disadvantage in the area of two to three dollars per barrel? A. Well, the penalty, of course, resulted in the fact that we had to attempt to get our prices up, our refined product prices up sufficiently to pass through that—those cost increases.

Q. Now, Mr. Luellen, do company operated stations permit Ashland to offset in part these disadvantages of crude acquisition? A. Yes, sir, by protecting us from loss of substantial volumes of uncontrolled business.

Q. Turning your—directing your attention, Mr. Luellen, to Ashland's operations in the State of Maryland, can you tell (T. 411) us when Ashland first entered the unbranded market in Maryland? A. Yes, it was in 1961.

Q. Can you tell us whether Ashland has ever had a lessee dealer operating in the State of Maryland? A. No, we have not.

Q. At the present time how many stations does Ashland operate in Maryland? A. There are seventeen.

Q. Would you again very briefly since you've already touched on this tell us what these stations look like and their marketing strategy and how they operate? A. Yes, they're typical of other price marketers, I believe. They typically are stations located on parcels of ground usually not at intersections as is the case of branded operations. The buildings are small, they include a shelter area for attendants and a small storage area. There are no services offered. No service bays are present or in the case of two

stations which were acquired from other companies where there were bays, they are boarded up. Price is the principal appeal to the consumers. The other appeals are long operating hours, typically they operate eighteen hours a day, none less than eighteen hours a day, three hundred sixty-five days a year. Some of them are twenty-four hours per day operations. Fast service, low price, constant hours of oper—long hours of (T. 412) operation.

Q. Will you tell us something about the pricing policies of these stations in relation to major branded marketers? A. Well, major branded marketers really we feel are not our competition. Our competition is from others who market similarly. Price is all important and our price must be lower as must prices of others who market similarly than is the price of major brand dealers who offer full service, credit cards, tour service, the entire package associated with that kind of operation.

Q. Does Ashland have a policy as to how many pennies below the major brands it attempts to price? A. No, we have no policy.

Q. As a matter of practice in the State of Maryland, approximately how much lower in price have these Ashland stations been? A. Approximately three cents.

Q. Three cents a gallon. Mr. Luellen, I'd like to hand you photographs of four of Ashland's stations in the State of Maryland bearing the brands that you have described and ask you if these are typical of the stations which Ashland operates in the State of Maryland? A. Yes, sir, they are.

Q. None of these stations, am I correct, offer service (T. 413) or has service bays or other facilities? A. That's right, none of them does.

Q. Mr. Luellen, are you familiar with Chapter 854, the legislation which we are concerned with— A. Yes.

Q. –in this litigation? A. Yes, I am.

Q. Are you familiar with what that Act would import for Ashland and seventeen stations in Maryland? A. Yes.

Q. Has Ashland considered what alternatives it might follow in the event that this statute should become effective? A. Yes, we had to consider alternatives, of course.

Q. What are the alternatives as you see them? A. Well, the first thought is that we would attempt to place this gasoline through retail outlets in some other state. The second–that of course would involve disposition of the stations which would be unfortunate at best and undoubtedly difficult because their best use, we feel, is their present use. Another alternative, of course, would be to consider dealer operation, which we have done, and we know that we would not choose that route if there were any other alternative open to us.

Q. Let me stop you there for a moment. Why is it (T. 414) Ashland's view that they would not operate the seventeen stations through lessee dealer? A. Because we simply could not control the vital elements, those being price, hours of operation and appearance standards.

Q. Is this decision based upon any experience within the company? A. Yes, sir, it is.

Q. Would you please explain that, please? A. Well, we have had dealer operations both in our branded operations and in a few of our private brand operations; and we simply–we have learned through very hard experience that we simply cannot control these vital items.

(Court) Mr. Drogula, do you want to enter these photographs into evidence?

(Mr. Drogula) Yes, sir. Would Your Honor prefer that I offer them at this time?

(Court) All right.

(Mr. Drogula) I would do so.

(Photographs filed herewith as evidence as Plaintiffs' Exhibit #12A through 12D)

Q. Mr. Luellen, does Ashland engage in the sale of gasoline in the State of Maryland at wholesale? A. Yes, we do.

(T. 415) Q. Would you please describe those activities? A. We sell to customers who typically operate their own service stations under their own brand names and those customers are also price marketers. Some of those customers have both direct operated, salary operated stations and dealer operated stations. The customers cover a wide range of size, economic size, from small individually operated businesses on through multi-station, private brand chain operators and even includes such giant companies as Sears Roebuck, Penneys, Food Fair who by our gasoline, resell it directly through salary operated stations located at their stores.

Q. If Ashland were obliged as a result of the legislation involved in this litigation to withdraw from retail activity in Maryland, would that have an effect upon Ashland's wholesale activities? A. Yes, sir, it could. It would jeopardize our position. We have found that we can expand as we did into the Maryland market in 1961 only if we can achieve a balance of uncontrolled and direct retail business which is controlled; and so the losses at retail business would obviously reduce our total throughput in barrel, our total marketing in Maryland.

Q. Is any of the gasoline which Ashland sells in Maryland Ashland's own gasoline? A. No, sir, it is not.

(T. 416) Q. Would you please indicate how Ashland acquires the gasoline which it sells in Maryland? A. We acquire it by exchange.

Q. With whom do you exchange? A. Continental.

Q. Continental. Now would the inability to operate

retail stations as company owned facilities jeopardize Ashland's ability at wholesale to enter into such exchange? A. Yes, it could where the exchanges must be–the exchange volumes must be in balance, of course, They are in balance now. They are in balance because we have the total requirement that consists of both retail and wholesale business. If we're deprived of either segment of our business, then the exchange will be out of balance and it could be unbearable.

Q. Mr. Luellen, would you please indicate to the court who you consider your competitors to be in the State of Maryland? A. Our competitors at retail are other price marketers and they include the many different kinds of marketers that I touched on briefly in the description of our wholesale business.

Q. If Ashland withdrew from the State of Maryland as a result of this legislation, would it have the capacity to reenter the state at a future time without undue expense or burden to the company? A. Well, certainly it would be very expensive and (T. 417) very inconvenient and additionally very disruptive to our total operation; and I really can't say, of course, definitely but it would be very difficult.

(Mr. Drogula) I have no further questions, Your Honor.

* * *

(T. 417) (Mr. Drogula) Your Honor, before the cross examination proceeds, may I offer into evidence documents previously marked as exhibit 13A and 13B?

(Court) All right, sir.

(Graphs filed herewith as evidence as Plaintiffs' Exhibit #13A (T. 418) and 13B).

CROSS EXAMINATION

By Mr. Woodstock:

* * *

(T. 420) Q. From your understanding of the Maryland Act, does it in any way affect Ashland's crude oil supply situation? A. No, not directly, It does affect potentially very severely our total refining operations, however.

Q. I ask you about your crude oil supply situation. A. Yes, sir and I answered.

(T. 421) Q. Availability– A. And I answered no.

Q. So the fact whether the Maryland law stands or falls is not in any way going to change or alter your crude oil situation? A. That's right.

Q. And until the crude oil situation changes, how can your refining situation possibly change? Is there any way it could possibly increase if you don't get more crude oil?

* * *

(T. 421) A. We can increase our refining runs and we hope to do so. To do so, of course, we'll have to acquire crude oil at very high cost. It will be impossible to do so based on our previous experience unless we are free to operate our sales in the manner we always have operated which includes sales both (T. 422) at wholesale and at retail.

Q. Have you ever tried to get rid of your entire refined products to the wholesale market? A. Ah, no, we have not.

Q. Have you ever investigated the possibilities of potential buyers in that market to buy up your full production of refined product? A. We've never wanted to find a buyer for our total production. We find much more appeal in selling to numerous wholesale customers and then balancing those sales with retail.

* * *

(T. 422) Q. You testified as to Ashland's experience in trying to operate branded dealer lessee stations in Michigan. I believe you stated that was initiated in 1957, is that correct? A. I said that first and then I corrected myself, I think it was in 1953 that it began. I'm certain it was because we ended that effort in 1970, seventeen years later.

Q. I'm sorry. A. Seventeen years later we ended it so it was 1953 to 1970.

Q. I believe you also said you had an investment of a million dollars, initial investment. (T. 423) A. Over a million dollars, yes.

Q. How much over a million dollars? Two million? A. No, slightly less than a million one.

Q. How many stations did you try to crack the Michigan market with? A. Oh, I think—I'm sorry, I don't have the record with me. I would say that perhaps thirty-five at maximum.

Q. You had thirty-five stations built and— A. Built or acquired.

Q. Their cost of a million point one? A. Pardon?

Q. For a cost of a million dollars you had that— A. We did not build them all, Mr. Woodstock, we acquired some by lease from their owners.

Q. How did Ashland's station representation in numbers now compare with the stations of the other major competing brands in number at that— A. Well, in the total state, of course, we were in—we were not a significant factor. In certain areas, certain towns in Michigan, we had enough stations. We thought we had acquired enough stations to give us a fair chance at surviving.

Q. Do you have any idea of the total number of service stations in the State of Michigan at that time? A. No, sir.

(T. 424) Q. Not even a ball park figure? A. No.

Q. Do you think that thirty-five stations into the entire State of Michigan would enable you to ever possibly gain more than one percent of the total Michigan market? A. Certainly not, but within individual communities where we had two, three or four stations as we had, for example, the Ypsilanti area, then we certainly felt that we did have a fair chance to compete effectively.

Q. You testified on direct— A. Had we succeeded in Ypsilanti, for example, we would have been encouraged to go to the next town and the next and the next, which is the way we build a relatively successful branded operation in the eastern Kentucky and that area.

Q. You never considered going to the major metropolitan area in Michigan like Detroit? A. No, sir, although Ypsilanti, of course, is on the fringe of it.

Q. You did testify on direct that you never got more than one percent of the Michigan business, is that correct? A. No, we had something less than one quarter of one percent.

Q. Well, when you went into it with a commitment of slightly over one million dollars and the number of thirty-five (T. 425) stations, did you ever anticipate that you would acquire more than one percent of the Michigan business? A. Certainly, certainly we had hopes.

Q. In what time frame, sir? A. Well, it was a long time ago, Mr. Woodstock, and I can't tell you. I would say if I were facing that decision today, I would hope to be able to do it within five to ten years. I would think that there would be no way I could justify recommending that kind of investment unless it could be done in that period of time so I believe we felt that we gave it a very fair trial.

Q. And five year period would probably be sufficient to give you an idea as to whether or not you could make it in the market retailing that way? A. I would hope so, yes.

Q. That would be true for anybody who was in your situation and wanted to try doing that and– A. Well, I can't speak for others, of course.

Q. Are you familiar with the wholesale accounts that you provide products to in the State of Maryland? A. In general, yes.

Q. Any of these contracts or supply agreements cancelled during the '73 through '74 period? A. Well, we have no written contracts. During 1972 when (T. 426) it became apparent that crude oil supply was going to be short, we notified all of our customers that we would put them on a allocation program which we voluntarily administered and we notify them also that if they chose to leave us, it appeared to us that supply was going to be a very severe problem and that if they chose to leave us and not avail themselves of this base allocation that we voluntarily established for them, this was prior to FEA's advent, then that if they wished to come back at a later time we possibly would not be able to supply them.

Q. Did that in fact–was that borne out? A. Yes.

Q. And certain people stopped being supplied by you? A. Yes.

Q. Did you continue to supply your own stations? A. Yes.

* * *

(T. 428) Q. How many of those wholesalers in Maryland had ceased to receive supply and be supplied by Ashland during this period of '73, '74, the ones you stopped supplying actually operated independent service stations? A. All of them.

(T. 429) Q. All of them.? A. Yes, all of them we stopped, stopped voluntarily, Mr. Woodstock.

Q. Well, if they didn't have any product, I guess they had to close the door. A. They stopped buying from us

because they could acquire the product at a lower price from another supplier.

Q. Do you know for a fact from whom they acquired it? A. No, I don't.

Q. Do you know for a fact that they did acquire it? A. Yes, I do.

Q. Do you for a fact know the price? A. No, sir, I have access to those records. I don't have them with me.

Q. Where would you acquire records of somebody else's price? A. Well, we would have no proof, of course, unless we saw an invoice which our salesmen occasionally do. It's a part of their duties, of course, to try to find what competitive prices are.

* * *

(T. 434) Q. Is the gasoline that you market in Maryland through your existing company stations, is it Ashland refined product? A. Through our existing company stations?

Q. In Maryland. A. No, sir, it is not. It's the gasoline we acquired by exchange as I mentioned earlier from Continental.

* * *

(T. 436) MARY HUDSON VANDEGRIFT,
a witness of lawful age after being duly sworn, deposes and says:

(Clerk) Please state your full name and address.

(Witness) Mary Hudson Vandergrift, 2900 Corona Road, Shawnee Mission, Kansas.

(Clerk) How is your last name spelled?

(Witness) V A N D E G R I F T.

DIRECT EXAMINATION

By Mr. Drogula:

Q. Miss Hudson, for purposes of your testimony today, would you prefer to be called Miss Hudson or Mrs. Vandegrift? A. I guess I prefer to be called Mary Hudson because that's my business name.

Q. All right. Miss Hudson, you are the president of Hudson Oil Company, is that correct? A. Yes, sir.

Q. Would you please describe for us what Hudson Oil Company is please, how it operates? A. It's an oil company. It operates in thirty-six states and we have approximately three hundred and fifteen service stations; and we are primarily a marketing company.

Q. And do you operate gasoline stations throughout the states that you've just identified? (T. 437) A. Yes, we do.

Q. Does Hudson Oil Company have a refinery? A. No, we don't.

Q. Does Hudson Oil Company engage in the production of crude oil? A. We did at one time, but we do not have production at this time.

Q. In other words at the present time your company is a pure gasoline marketer, is that correct? A. Yes.

Q. Is your company affiliated in any way as a subsidiary or otherwise with a producer or refiner? A. No, sir.

Q. Miss Hudson, how many stations do you have in the State of Maryland? A. We have five stations.

Q. And what brand name is associated with those stations? A. Hudson.

Q. Would you describe for us the kind of stations these are in terms of their physical characteristics? A. They are approximately on two hundred feet of frontage with approximately ten pumps, five islands, two pumps

to a island and usually on a primary street or a U.S. (T. 438) highway number.

Q. Would you tell us what their pricing policy is in terms of pricing your gasoline sold? A. We're considered an independent company and an independent company usually prices two or three cents under the major price.

Q. Are these stations owned and operated by Hudson Oil Company? A. Yes, sir.

Q. Where do you obtain the gasoline that is sold in these stations? A. Are you referring to Maryland?

Q. Yes, ma'am.? A. Ashland Oil Company.

Q. Now, Miss Hudson, you said that you operate these companies as company owned stations. Would you tell the court why Hudson Oil prefers to operate these stations as company operated stations? A. We prefer to operate them as company operated because we have a better control, we can delegate the hours to be open, we can also determine the price we want to sell our gasoline for and also better housekeeping and just—and all around we just feel like it's a better operation for our type.

(T. 439) Q. Is it important for an independent gasoline marketer such as yourself to be able to control the price of gasoline? A. Yes, it is.

Q. Why is that so? A. Well, our stations are built primary to be a very highly competitive station; and price is a very important thing to us because we do not give other services like lubrication, we do not use TB items—TBA items and for that reason we have to depend on a price and a large volume.

Q. Are all of the stations in the states in which you operate company owned and operated? A. Yes, sir.

Q. Have you ever had dealers operating these service stations? A. We tried dealers at one time about the start of World War II for about six months and we found that it did not go very well with our type of operation.

Q. What were the problems at that time that you discovered? A. We completely lost control of our stations. We had dirty stations. The dealer would not carry out the orders; and of course we did not and were not able to enforce certain regulations because they were leased out; and we cancelled our leases and took the stations back over.

(T. 440) Q. Miss Hudson, we have noted in the press that Hudson Oil Company has indicated some intentions as to acquiring a refinery, is that correct? A. Yes, that's right.

Q. Could you tell us when you make a decision to look into this possibility? A. When the energy crisis hit, we found that we had a situation occurred that about thirty-five percent of our stations were closed and we thought our next step—that we should acquire a refinery and this was done about February of this year of the site selection.

Q. A site selection and where did that take place? A. We have a six hundred and eighty acre tract near Houston, Texas.

Q. And have you taken steps to acquire that property? A. We have purchased the property, yes.

Q. What will a refinery do to support or improve your organization? A. We will have a assured source of supply, one that will not be interrupted and we feel that it will be just a much better operation. We'll be able to keep our stations open and operating the hours we would like to have them operated.

Q. All right, are you familiar, Miss Hudson, with the (T. 441) Maryland statute which is the subject matter of this litigation? A. Yes, sir.

Q. Do you support the purposes of that statute? A. No, I do not.

Q. Would you please tell the court how you feel, if you do, that this statute would harm your company? A. Well, first we would have to dispose of our stations here in Maryland and, of course, we do not want to do that. We've been in Maryland for about twenty years; because we are definitely going on with our refining plans and we just feel that to have a refinery and service stations, it's a good marriage.

Q. Well, are you familiar basically with the term backward integration, meaning it's a marketer who acquires a refinery and thereby backs into a refining operation? A. Yes, we would have acquired a refinery before now, but it takes a lot of money and so we feel right now that we're in a position that we can acquire and build a refinery which will be a very beneficial asset to our company.

Q. Do you also feel that your ability to operate a refinery will improve the quality of the services you offer? A. Yes, sir.

Q. Do you feel that your ability to operate a refinery will improve your ability to serve the motoring public? (T. 442) A. Yes, sir.

Q. You've indicated, Miss Hudson, that you purchase your gasoline from Ashland. Are you aware of the fact that Ashland has a private brand operation in this state? A. Yes, sir.

Q. Are you aware that Ashland operates under the names Redhead, Buy-Lo, Hi-Fi—

(Mr. Woodstock) Objection, Your Honor. Suggesting the answer is leading.

(Mr. Drogula) I'll rephrase.

(Court) Yes, it is a leading question.

(Mr. Drogula) I'm sorry, Your Honor, just trying to move along.

Q. Would you please tell us, Miss Hudson, the brands that Ashland operates under to your knowledge? A. Ashland operates Pay-Less, Buy-Lo and Redhead.

Q. Are you familiar with the way that those stations are operated? A. Yes, sir, because I operate in competition with them.

Q. Do they operate similar to the way you operate? A. Yes, sir.

Q. Miss Hudson, do you believe that your company of which you are the president needs a law such as Chapter 854 (T. 443) to protect you from the competition provided by Ashland's stations? A. No, sir.

Q. Why do you feel that way? A. Because I believe in competition.

Q. Do—are you—do you fear competition provided by Ashland's stations? A. No, I do not.

Q. Why is that? A. Because of past experience, forty some years, I've had a lot of experience in competing with Ashland and others.

Q. You feel that you are an effective competitor and can meet that competition? A. I certainly do.

CROSS EXAMINATION

By Mr. Woodstock:

Q. * * * You testified you are contemplating to build a refinery, is that correct? A. Yes, sir.

Q. Where do you intend to get your crude oil from?

* * *

(T. 444) A. We will purchase our crude oil similar to Ashland Oil, we'll purchase it offshore and some domestically.

Q. Do you have any firm commitments from anyone? A. Yes, we do.

Q. From whom?

* * *

(T. 445) A. Well, we have made some arrangements for the offshore crude. We're presently working on some arrangements for domestic crude.

(T. 446) Q. And I had asked you with whom. A. With some Middle East countries. I prefer not to give this because we have a lot of competition in this room.

* * *

(T. 446) Q. I believe you also testified that in 1952 you had attempted to operate some of your stations as dealer lessees, is that correct? I said about 1942.

Q. '42? A. Before World War II, yes.

Q. It was during the war? A. During the war, yes.

Q. How many stations did you try to do that with? A. I believe it was around thirty stations.

(T. 447) Q. Thirty? A. Yes.

Q. How many did you have total at that time, if you can recall? A. At that time, we probably—it was a family group, probably about a hundred and twenty stations.

Q. And have you tried it since? A. No, sir.

* * *

(T. 447) JOHN H. LICHTBLAU,

a witness of lawful age after being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Drogula:

Q. Please state your full name and present address, sir? A. My full name is John H. L I C H T B L A U and my address—my business address is 122 East 42nd Street.

(T. 448) Q. What is your occupation, Mr. Lichtblau? A. I am executive director of the Petroleum Industry Research Foundation.

(Court) That's in New York, I take it, Mr. Lichtblau? A. Yes, sir.

(Court) All right.

Q. Will you please describe for us the activities of the Petroleum Industry Research Foundation? A. Our work consists primarily of economic research in the area of petroleum and related energy matters. We do studies on the marketing out of international petroleum activities. Things of that sort. We have been doing this for the last twenty-five years.

Q. How long have you been executive director of this organization? A. Since 1961.

Q. Will you briefly trace for us please your prior engagements in this area? A. Well, I worked for the Petroleum Industry Research Foundation for fi–six years before I became executive director. Before that I worked for one year for an oil consulting firm, Walter J. Levy, in New York. Before that I worked for the National Industrial Conference Board as an economist and before (T. 449) that I worked for the United States Department of Labor, from 1950 to 1953 as an economist.

Q. Are you presently engaged in any activities as a consultant in petroleum economics? A. Yes, sir, in addition to my work as executive director I do some consulting with private companies.

Q. Will you describe for us those government organizations first with which whom you have been associated? A. Well, I was a consultant to the Office of Emergency Preparedness on the matter of petroleum economics from 1971 to 1973. That agency, which doesn't exist any longer, at that time was the principal government agency responsible for oil import policy. I also was a consultant for the U.S. Department of State last year and did some–wrote some reports for that agency.

Q. In what areas were those reports involved? A. Petroleum economics.

Q. Have you had any other engagements with government agencies? A. Well, I worked for the Department of Health, Education and Welfare. I'm sorry, that's incorrect. What is it called, Environmental Protection Administration; and I worked for awhile for the government of Puerto Rico as an economic consultant in connection with the project of building (T. 450) new refineries in Puerto Rico.

Q. Mr. Lichtblau, I'd like to hand you a document, a copy of which has been furnished to Mr. Woodstock, which contains biographical data as to your career. Examining that document, would you please describe for us what papers and what writings that you have performed in the field of petroleum economics. A. Well, I've written quite a number of papers over the years, some of these were published, some of them were just given at lectures, at congresses, at conferences. One of the papers that was written more recently was a chapter in a book on competition in the U.S. oil industry which was published by the Ford Foundation's Energy Policy Project. My chapter dealt with the outlook for independent refineries.

Q. Have you had any occasion to teach in the field of economics? A. I once taught a course at the New School for Economic and Social Research in New York in the field of energy. It was called the Politics and Economics of Energy.

Q. Are you a member of any professional or governmental organizations in the field of petroleum? A. Well, I am a member of the National Petroleum Council which is an advisory board to the Secretary of the Interior. You have to be appointed by the Secretary. I'm (T. 451) also on an advisory committee to the Federal Power Commission and I'm a member of the American Petroleum Institute and the American Economic Association.

Q. Would you tell us with a little bit more detail what is the function of the National Petroleum Council? A. The National Petroleum Council is an advisory body made up executives and other experts in the oil industry and it advises the Secretary of the Interior on matters related to petroleum and similar energy problems. It's appointed yearly. Its members rather are appointed yearly by the Secretary of Interior. I've been on the board since 1968. We do all kinds of studies which are then published and I've been on a number of their study committees.

Q. Have you had occasion, Mr. Lichtblau, to testify on petroleum matters before the United States Congress? A. Yes, on several occasions.

Q. Would you describe a few of those occasions for us? A. Well, I testified several times before the Senate Interior and Insular Affairs Committee. That committee did a long term study on the U.S. energy situation and they requested my testimony on several occasions. I testified once on the supply situation. I testified on the storage, the need for strategic storage in the United States; and also I was asked to testify on several bills that were presented by the (T. 452) Administration and the committee had hearings on those bills and asked for expert witnesses; and I was invited among others to testify.

Q. In connection with your activities for the Petroleum Industry Research Foundation, Inc.; do you have occasion to keep yourself informed as to federal energy legislation? A. Yes, sir, I have to do that. That's part of my work.

Q. Have you been familiar with the Emergency Petroleum Allocation Act of 1973? A. Yes, sir.

Q. Are you familiar with the activities of the Federal Energy Administration in implementing those programs?

A. Yes, sir, in general I am.

Q. Mr. Lichtblau, are you also familiar with Chapter 854 of the Laws of the State of Maryland, which is an issue in this case? A. Yes, sir.

Q. Would you please state your understanding as to what that provision requires of entities that are identified as producers or refiners? A. Well, oil refiners would be prohibited from owning and operating stations, gasoline stations in the State of Maryland; and those that are already operating these stations will have to give them up within one year.

(T. 453) Q. Do you draw any distinction between the types of petroleum producers and refiners that operate in Maryland? A. Yes, there are different types. There are the brand operators, that is the refiners that—whose product is well known, is branded by product and then there are non-branded operators. These are the—by type of gasoline the differences. In addition to that you have differences of levels, wholesale operators and retail sales of refiner outlets, refiners.

Q. Are there also distinctions as between majors and independents?

(Mr. Woodstock) Objection, Your Honor. It's leading.

(Court) What's the objection, sir?

(Mr. Woodstock) He just gave his classification for the types of competitors in the retail market; and I believe the question also had a— requested a clarification and gave the answer as to the categorization.

(Court) Overruled.

Q. You may answer, sir. A. Will you repeat the question?

Q. Yes, are there also distinctions as between majors and independents? A. Yes, there are.

Q. How would you identify those entities, refiners and producers who operate in Maryland as majors? (T. 454)

A. The majors are primarily those who operate on a branded basis, that is, their gasoline's principally a well-known, branded, advertised product and the basic sales economics is customer acceptance of the brand name. That is the principal operating form of the majors and their principal form of selling their gasoline is through independent dealers, independent branded dealers. There are other points, but that's the most important, the most frequent form of distributing gasoline for the majors.

Q. And as to independents? A. The independents are primarily selling their gasoline on a non-branded basis. It is not advertised. It is not known so it must compete on something else than the name of the product; and the principal way it competes is through discounts, through a lower price than the branded gasoline.

Q. You are appearing in this case as a witness for Ashland Oil, is that correct? A. Yes.

Q. You've been engaged as an expert, is that correct, and Ashland is paying you a fee? A. Yes, sir, that's correct.

Q. Are you also, therefore, familiar generally with Ashland's role in the petroleum industry? (T. 455) A. Up to a point. I haven't made any special study of Ashland, but I have some familiarity.

Q. Does Ashland fit the category of independents that you've just described? A. Yes, sir, Ashland would be considered an independent refiner under any of the generally accepted definitions of the term.

Q. What are those accepted—generally accepted definitions of an independent refiner? A. Well, an independent refiner generally is one whose crude oil self-sufficiency is either zero or relatively low. That is, a refiner who must buy the bulk of its crude oil requirements from outside

sources at market value as opposed to integrated refiner whose crude oil supply comes to a significant extent from its own controlled sources.

Q. Why are independent refiners motivated to market through unbranded outlets? A. Well, because most of the independent refiners are relatively small, that's small relative to the ten, fifteen largest integrated oil companies. Being small they cannot advertise their product on a wide regional or on a national basis. It wouldn't pay to do that, therefore, they have to find another way of selling their product and that is through price competition rather than through brand competition. If (T. 456) they were the size of the majors, they would operate like them. So size is a very important aspect of branded versus non-branded competition; and out of that fall a number of other things.

Q. Does crude insufficiency influence their marketing strategy? A. To some extent it does.

Q. In what way? A. Historically it does because historically the major companies have been primarily producers and processors of crude oil to a larger extent than obviously the independent companies so that the needs to have a continuous flow-through from crude oil to branded outlets is less for a independent refiner than for a integrated refiner historically because the integrated refiner had access to a natural resource while the independent refiner had to purchase that natural resource.

Q. You mentioned several times in your statement references to the size of the independent refiners and their financial resources. A. Um hmm.

Q. Does this have anything to do with establishing brand identification in the minds of the consumer? A. Considerably, yes.

Q. Would you please explain that? A. Well, the independent refiner simply doesn't have the (T. 457) means to establish the brand name. He doesn't have the financial means, he doesn't have the size, therefore, he has to go the other route; and that is typical throughout the oil industry, virtually all independent refiners except in some areas, usually areas close to their own refinery, outside of those areas the bulk of their product, their gasoline is sold on a non-branded basis.

Q. In your opinion, Mr. Lichtblau, could an independent refiner compete successfully with major branded operations in distant markets through the marketing strategy followed by the major company? A. Probably not. I mean there have been some instances where it has happened, but by and large, he would find it very difficult because he couldn't use a branded name since he doesn't have one, since he can't afford to build one, therefore, he has to use some other means of selling his product; and that other means is discount. Now the only way you can sell your product at a lower price, if you're an independent refiner, is to do something to lower the cost of your distribution because certainly your crude oil cost is at least as high as that of the major. It's likely to be higher, but it can never be lower because the major has direct controlled access to crude oil, the independent does not. So that at the crude oil level there is no savings (T. 458) possible. Refining runs, refinery operation costs is it anything lower for the very large company because of the economy of scale. So the only way he can sell gasoline at a lower price than the major and the branded one is to utilize the volume of his outlet, that is, maximize gasoline sales at his station because gasoline sale is a very high capital intensive, capital intensive outlet, which means that the more gasoline you put through that unit, the lower is your unit cost. So that

what is typical of an independent gasoline outlet is a very high throughput unit compared to the branded major gasoline outlets; and if you have that very high throughput, you then can afford a lower per unit margin and undersell the branded major.

Q. We have heard testimony in this case, sir, about three different kinds of companies in the industry, the majors, the independent refiners and the independent marketers. In your opinion do independent refiners more closely resemble in their marketing strategies major companies or independent marketers? A. No, I think they resemble much more closely the independent marketers because both independent marketers and independent refiners sell a non-branded product, they sell it at discount prices and they are able to give those discounts because of volume throughput; and they also are primarily—they're outlets, sellers of gasoline rather than suppliers of (T. 459) other services such as the branded stations generally are.

Q. From your experience, do independent gasoline marketers who are not associated with producers or refiners generally operate their stations through company owned facilities? A. Independent marketers?

Q. Yes. A. They operate themselves, independent marketers.

Q. All right; and why do you believe that they do that? What is—why is that consistent with their marketing strategy? A. Because of the large throughput, because there's a need to keep your stations open for a long time. There's a general need to—for a different type of management than you have for your branded major outlet.

Q. In these respects is the need of the independent refiner any different from the need of the independent marketer? A. No, that's right, they would be the same because their type of marketing is the same.

Q. From again your experience and your analysis has Ashland's marketing strategy enabled it to compete effectively in the industry? A.Yes, Ashland is an aggressive competitor, has maintained–well, increased its market share generally, it's considered one of the better run companies in the industry.

Q. Would you–we've also heard mention of terms such as (T. 460) price maker and price follower. How would you categorize Ashland Oil or if you give any credence to those classifications? A. Really I don't, I don't think it's quite clear who is a price maker and who is a price follower in any given market.

Q. Would you amplify that please? A. When prices change, someone makes the change and someone else is the follower and that difference between as to the price maker and the price follower, but I think from what I have seen it is very difficult to establish who is the price follower, who is the price maker in any given price change, price reduction or price increase, so I really don't know who to qualify, classify the price leader and as a price follower.

Q. Does Ashland's ability to operate company owned facilities enhance its position as an independent refiner? A. Yes, yes, it does.

Q. In what way? A. Because if it didn't have that, obviously it would find it very difficult to operate those stations through independent branded dealers because as we said before independent branded dealers have a different type of operation. The volume is generally much lower. It would be very difficult to get the kind of volume through independents branded oper– (T. 461) actions–independent to–independent operation than through company owned operations. So if the volume were lower, there would be no way for Ashland to give the kind of discount which is necessary to sell its gasoline; and if it

couldn't sell its gasoline through its retail outlets, it would lose a whole section–segment of the market.

Q. Given their high crude acquisition costs, in your opinion do independent refiners need marketing outlets other than general wholesale transactions? A. Yes, they do, simply because–

Q. Why is that? A. Well, a refinery has to have sufficient outlets, a refinery is a pumping, hourly operation, you cannot shut it down for a day and then pick it up again. So you need a continuous stream of outlets, stream of sales at all times. Now wholesale markets are very, very volatile. You may have a wholesale account one day and because of a fraction of a penny a gallon, he may leave you and go to someone else, independent wholesale accounts, so if you had to do your entire business on the basis of selling to wholesale, independent wholesale markets, you could at a very volatile, which would be very difficult for your refiner to operate. Having your own outlets, your own company controlled outlets assures you of a continuous, steady market for your gasoline particularly (T. 462) since you control these stations so to that extent it is necessary to have this sort, this source of outlet for any–for a non-branded refiner.

Q. If Ashland were obliged by the effectiveness of this statute to withdraw from the Maryland market, what would the impact be on competition in Maryland? A. Well, if Ashland were obliged to withdraw, it would have to do something about its gasoline stations, the seventeen stations which it owns presently, it would have to dispose of these stations and the effect on competition would be to reduce it because probably some of the stations would not even be sold to any other gasoline marketer. Some of the stations may just end up as being sold for retail or for some nongasoline outlet, some of them may be just shut

down for an indefinite period. There is, of course, there are, of course, those that would buy these stations for gasoline purposes, some might be independent marketers such as the type that Ashland operates. Some might be branded dealers to the extent of which they are branded dealers or companies that buy the station on behalf–for branded dealers with the least amount of these branded dealers, to the extent to which these will be the purchasers, the gasoline would then be sold at branded price level which would mean it would be higher than the gasoline prices of independent marketers–refiners such as (T. 463) Ashland charged so the double effect would be that there would be a reduction probably in the number of stations and some of the stations that would continue to sell gasoline might sell so at a higher price than at present.

Q. If all such companies such as Ashland who are private brand marketers and who are associated with a producer or a refiner were obliged to withdraw from Maryland, what effect would that have on the price of gasoline? A. It would raise the price of gasoline throughout the state because these private–we said these private brand marketers are discount marketers, if they were no longer allowed to operate here, these private brand refiners and discount marketers and if they were no longer allowed to operate here, as I said some of them would obviously go to kind of brand operations. There would be a withdrawal from the market; and any withdrawal from the market is likely to have anti-competitive results.

Q. We've heard testimony generally as to barriers to entry in the State of Maryland. Can you conceive–strike that. Could Ashland or an independent refiner enter the State of Maryland assuming that it is a territory distant

from their refineries through branded marketers? A. No, unless they go through the whole process of advertising, of getting their branded–their name branded which (T. 464) would be very expensive and particularly if it's just done on a single state basis so that by and large they would not be able to do that.

Q. You indicated that as a course of your responsibilities you're in contact with federal energy legislation. Did the Federal Government determine to treat the independent refiners and independent marketers jointly as the classes to be protected under that legislation? A. In the Federal Allocation–Petroleum Allocation Act in the preamble it specifically states that it is the function of the Act to protect the independent refiners, small refiners and independent marketers. It is specifically mentioned in there.

* * *

(T. 466) CROSS EXAMINATION

By Mr. Woodstock:

Q. Mr. Lichtblau, assuming Ashland decided to leave the day after the Act was upheld as being constitutional, would anything prohibit a person like Mrs. Hudson, who was just sitting there a moment ago, as of today her current status from coming, in, taking over those stations and continuing to market gasoline to the citizens of the State of Maryland at two to three cents under very major in the state? A. No, that will be possible.

Q. To the best of your knowledge as an expert in the oil industry, are there other individuals and other small companies that are not associated with a producer or a refiner who operate retail service stations? A. Yes, there are, but I doubt that there are enough such stations to be able to take over all the stations that would be prohibited under the statute. You're talking about something like a

hundred and eighty stations in the State of Maryland; and there are not that many independent marketers to take over that many stations. So I doubt whether in that situation all of these stations or the majority of them would be taken over by the Hudson-type of operation. Some would be I'm sure of it, but as I said some would not and some would be taken (T. 467) over by branded ones. So that you would have a net loss.

Q. Loss of what, numbers? A. Of numbers and also an increase probably in the price of gasoline, the average price of gasoline.

Q. Would this number prohibit such people that market gasoline in the State of Maryland, like J. C. Penney from continuing to do business? A. I don't think so—

Q. Would Sears Roebuck? A. No, they could continue. They're not affected by this law.

Q. Quarker State? A. No, they would not be affected by the law.

* * *

(T. 467) Q. Isn't it possibly, then, that the void can be least in part be filled by new competitors entering the field? A. In part in undoubtedly would, but that's my point. (T. 468) That in part it would not.

Q. Are you familiar with the FEA reports on the effect of the shortage on the independent markets in America? A. Yes, yes.

Q. Are you familiar with that bulletin that discussed the various types of statistical analysis undertaken? A. Yes.

Q. The result of which was FEA decided we have to do our own? A. Well, but they are—they also came up and showed us the shortage that existed or rather the problem that existed for the independent marketers was a temporary situation which was removed when the crude

oil situation changed and when the refinery shortage of 1973 no longer existed. This whole situation which caused all these problems was temporary and was due to factors totally beyond the control of the State of Maryland or had nothing to do with anything happening in the State of Maryland. It was a national and international problem which the Federal Energy Agency tried to react to and so did Congress.

Q. Assuming that the Act was—it went into effect and these people did leave the State of Maryland. Would that affect the overall demand for gasoline in this state? A. It would affect the ease with which the public (T. 469) could buy gasoline because any station that is now selling a hundred an twenty or a hundred and thirty thousand gallons, if that station no longer exists among—that means that that many customers would have to go somewhere else aside from any price effect. It would mean that a service would no longer be rendered. If a station is one place and that station is no longer there, it means that those who are—finds this the most convenient station would no longer have access to this particular point. So it would be some kind of a disservice to the consumer.

Q. Do you know how many of the Ashland stations, for example, within half a mile radius of them have ten competing stations within it? A. That's half a mile.

Q. And that's what you would call an inconvenience? A. It could be five miles in some cases. I don't know exactly where these stations are located; and, of course, Ashland has seventeen stations altogether. I think a hundred and eighty stations are at stake. I don't know where they're located, but they are somewhere where someone finds it better to go there than anywhere else; and some of these stations would no longer exist under this law.

* * *

(T. 476) (Court) Mr. Woodstock?

(Mr. Woodstock) May it please the court, State would like to make the motion to the court at this time that the court's summary judgment as to Paragraph D of Chapter 854 of the Laws of Maryland of 1974 be especially determined to be and entered as a final judgment from which an appeal can be taken and that the remainder of these proceedings be stayed pending that appeal. It's the State's position that the ruling has seriously diminished the State's ability to present its case in chief in defense of this statute, that our evidence was developed over the last four to six months on the basis of defending this statutory scheme and that as a result of going through the direct examination of Plaintiff's case and the State's exercising its ability to cross examine and finding that that ability was severely restricted in his approach to cross examining those witnesses; and that this matter—this bill, this regulation of this particular industry is of such vital importance to the State that we would—we are faced with a position of not being able to adequately and fully present our defense to the best of its ability. Lastly, Your Honor, we also feel very strongly that the court's ruling on Paragraph (T. 477) D is possible of reversal as a matter of law and—

(Court) No question about that.

(Mr. Woodstock) We'd like to seek the right to do that and have these proceedings stayed until such time as we get a ruling on that matter.

(Court) Mr. Noonberg.

(Mr. Noonberg) If the court please, speaking on behalf of Exxon, we would oppose very strenuously any effort to stay the proceedings in this case. Two reasons, first, we think it is entirely inappropriate for the State to take the position now after the Plaintiffs have completed their case for the State to take the position that it must now

appeal before it can effectively present its case. If at all, the time for making that sort of a motion, which I don't quite understand, would have been at the time of the court's ruling. Having elected not to do that, it seems to me incumbent upon the State to go forward with their case. So we would oppose a stay. Of course, the State can rest its case at which point an appeal would lie from the court's final determination.

(Mr. Preston) On behalf of Continental and Kayo we also oppose the request of the State under 605 for the entry of a final decree and the right to appeal at this time. Our reasons are the same as those just cited by Mr. Noonberg on behalf of Exxon. I point out to the court that the object (T. 478) of Rule 605 is to be able to obtain in a timely and continuous fashion hearings on all matters. The expense before Your Honor in this case is obvious, not only from the experts, but while counsel may not be quite as dear nevertheless there has been a large number of them during this entire trial in court. We've put in a great amount of time. All of this was well known to Mr. Woodstock at the moment of Your Honor's ruling. He did not at that time make any motion under 605, but instead took the option of sitting here allowing us to try our case and see if he would how it went at the end before making this motion. I submit to the court that it would be terribly unfair, a great expense and not be in the interest of justice at this time. As Mr. Noonberg points out to the court, Mr. Woodstock and the State have the option at this time of resting their case, of concluding this trial, but it is not fair to end this case on any kind of a stay at this time. We have tried this statute, and I point out to the court that a large number of the Plaintiffs in this case, my clients included, did not file suit under Section D since we do not have dual distribution patterns, do not have dealers in this State

and did not file suit under Subsection D, the TCA or TBA sections. That goes for Continental and Kayo, I believe for Commonwealth, PMC and I believe for Ashland also; and I ask the court to overrule Mr. Woodstock's motion; and it will be his decision on behalf of (T. 479) the State how to conclude this trial on the matter that we have been before Your Honor on this week. He has his witness present and is ready to go forward on Sections B and C; and he should do so.

(Court) Don't you think it does put the Plaintiffs at a very serious disadvantage, Mr. Woodstock?

(Mr. Woodstock) No, I don't, Your Honor.

(Court) Why not?

(Mr. Woodstock) Furthermore—if I could lay the groundwork first before I respond to that directly, as the court knows we have not had the opportunity to review the written opinion of the court's decision on that summary judgment.

(Court) I think I changed a word or two.

(Mr. Woodstock) Well, to this evening and the opportunity to sit down and review it in any detail was not available till last night. So we're just not sitting here passing the time and would not have made the motion unless I thought it was absolutely necessary. As far as the inconvenience to the Plaintiffs, I think that justice may require inconvenience to certain people at certain times, but does I believe inhibit us from putting on the full defense that this statute deserves for the reasons I've stated previously.

(T. 480) (Mr. Greenwald) Your Honor, may I be heard on this?

(Court) Yes.

(Mr. Greenwald) On behalf of Gulf Oil Corporation, I fully join in the comments made by Mr. Noonberg and Mr. Preston. I'd like to add that if Mr. Woodstock is

unable to go forward as to B and C, it can be only for the reason that in the view of the State of Maryland the entire statute is invalid without Paragraph D. If that is not the case, then he should be able to try B and C on their own merits right now; and if it is the case, B and C must fall, if D falls and that very well may be the case, then Mr. Woodstock as Mr. Noonberg and Mr. Preston have pointed out has the option of resting the State's case right now and appealing the entire statute right now.

(Mr. Drogula) Your Honor.

(Court) Yes, Mr. Drogula.

(Mr. Drogula) Very briefly, we subscribe to the views that have been expressed. In addition the rule that is designed to prevent piecemeal appeals could produce exactly that result if Mr. Woodstock's motion is approved. We could have an appeal at this time upon the partial summary judgment only to have that affirmed and find ourselves facing another appeal after a further extended hearing. So we strongly urge (T. 481) the court overrule the motion.

(Mr. Davis) Your Honor, on behalf of Phillips, we join the other Plaintiffs' counsel in opposing the State's motion at this time.

(Mr. Abrams) Your Honor, on behalf of Shell, we also—we subscribe to all of the remarks stated and would like to point out one further fact, Mr. Woodstock was aware of Your Honor's ruling the first day and the first hour of this trial; and the ruling as a matter of law it was not necessary to wait until last night to read Your Honor's opinion. It was the legal ruling quite clear.

(Mr. Reid) May it please the court on behalf of PMC—

(Court) Mr. Reid.

(Mr. Reid) —and Commonwealth we also join the opposition to the motion. I would like to add that the rule which Mr. Woodstock calls into play here is a rule

that is contrary to the general concept of appeals in the State of Maryland that there shall not be piecemeal appeals. It is akin to the federal rule that where there are unusual circumstances an interlocutory appeal may lie where the result will be in the discretion of the court a savings of time and a possible expedition of the case. Those factors are I think, required to be found in order to invoke an appeal under Rule (T. 482) 605 and it seems that after the case is at least half concluded and the Plaintiffs have rested there could be no such finding.

(Court) The court is inclined not to allow the motion. As I have previously remarked, at the beginning of the case upon giving my reasons from the bench as to reasons for sustaining the motion for summary judgment my purpose was to curtail as much as possible trial time which I felt would be unnecessary in view of the posture of the case which I felt justified acting on the motion as it did. I feel that at that time the Attorney General himself was present in the court room and I think it would have been incumbent upon him as team captain so as to speak to advise as to whether or not the State wished to invoke the provisions of Rule 605. The State has had the benefit of all the testimony as to the balance of the statute which the court felt was still subject to consideration; and I think the State must now decide whether to proceed with its case or to rest its case and allow the appeal to be taken. Obviously if this member of the court is wrong as to its ruling on Paragraph D, there is only one thing that will be done. The case will be remanded for the taking of additional testimony; and I suppose at that time the situation can follow the normal course if such takes place; but I do feel that the State had the option as of the time of the announcement and certainly it shouldn't have been a surprise. As I recall it, the argument (T. 483) was made back last summer; and

previously this member of the court indicated that it would arrive at its decision as early as possible not only as to the matter under motion for partial summary judgment but as to the entire case as soon as presented. So for the State now to claim to surprise as a result of the court's acting in an expeditious manner, I don't feel that this is something they could not have anticipated.

The court does not necessarily side with the State in every case it undertakes. There would be no point in having the court if that were the case; and therefore, I feel that it is now incumbent upon the State either to proceed or to rest its case and take the appeal.

* * *

(T. 484) JOHN KING COLEMAN,
a witness of lawful age after being duly sworn, deposes and says:

(Clerk) Please state your full name and address.

(Witness) My name is John King Coleman, I reside at 212 Sycamore Road, Severna Park.

DIRECT EXAMINATION

By Mr. Woodstock:

Q. Mr. Coleman, would you please tell the court what is your present occupation? A. I am the chief of the Gasoline Tax Division for the State of Maryland.

Q. How long have you held this position? A. For approximately fifteen years.

* * *

(T. 485) Q. And if you would briefly describe the duties and responsibilities of your position? A. We enforce the motor fuel tax law under Article 56 of the Annotated Code, which also includes your subtitle number for motor fuel inspection law. We're also charged

with the responsibility of enforcing the motor carrier law under Article 81 of the Annotated Code of Maryland.

Q. To whom do you report, Mr. Coleman? A. I report to Comptroller Louis L. Goldstein.

Q. Can you give us an idea of how many people are employed in your division? A. We have approximately ninety-six employees, we're also assigned six State Police full time.

Q. Within that division is there various areas of designated assignments that you could describe for us? A. The division budgetarily and administratively is broken down into three divisions or three programs. The primary program being an administrative program to cover all of the accounting functions and day-to-day business. We have an audit program to conduct field audits of the licensed taxpayers that we're charged to receive reports from. A (T. 486) third program is the motor fuel inspection program and they are responsible to periodically sample and inspect at retail and wholesale all of the petroleum products covered by the Act.

* * *

(T. 487) Q. Mr. Coleman, does your division generate any regular type of reports in conjunction with your gasoline tax collection (T. 488) activities? A. We are completely involved with EDP in just about every facet of activity we have. Starting with the day-to-day receipts, they come into the department from the various oil companies, diesel users, sellers and motor carriers. These daily activities are wedded into monthly reports, into fiscal reports covering taxable gallonage, tax resales made, where they're permitted by law. We provide delinquency controls for taxpayers who are delinquent, as well as assessment of penalties and interest.

Q. Does your office generate any other type of reports? A. There are numerous reports feeding out of

the computer system pertaining to monthly activity of each company that we're receiving these things from known as the Gallonage Report on a monthly basis and an annual basis.

Q. Is your division the only division within the Comptroller's office that has anything to do with gasoline taxation? A. We at the present time are the only ones making any activity or are in charge of any activity of collecting motor fuel taxes.

Q. Mr. Coleman, from the various types of reports you identified that your office generates on a regular basis is it at all possible to identify at any given time the total amount (T. 489) of gasoline sales from retail service stations for any given period of time? A. No, it is not.

* * *

(T. 489) Q. To the best of your knowledge do you know of any other state gasoline sales tax division or office which has a system capable of generating information regarding the daily or to any period of time actual retail sales of gasoline from retail service stations in their state? A. At the present time I can only recall one state having that possibility and that would be the State of Georgia where they're involved in making refunds back to retail service station dealers in the form of a collection allowance.

Q. But presently in the State of Maryland there is no such capability from your computer network, is that correct? A. Not at the present time.

* * *

(T. 490) Q. Were there any other special reports or investigations undertaken by the Comptroller's office or your division at the request of the Governor during this period of time? A. We had the initial request from the Governor's office (T. 491) to the Comptroller to conduct

an investigation as to the extent of the gasoline supplies in Maryland I believe in June or May of '73.

Q. How were you informed about that request? A. I was sent a memorandum by the Comptroller with a copy of the Governor's letter to him requesting that such an investigation be conducted.

Q. Mr. Coleman, I give you this document and ask if you can identify it. A. This is the letter I received a copy of from the Comptroller by the Governor.

* * *

(T. 491) (Mr. Woodstock) * * * I'd like to offer this into evidence.

(Copy of letter filed herewith as evidence as State's [Defendants'] Exhibit #A)

Q. Following the receipt of the memorandum from the Comptroller and the copy of the Governor's letter, Mr. Coleman, what did you do to actually implement and undertake this study? (T. 492) A. I requested a meeting with several of my staff members, including Mr. Arthur Price, who is chief of the motor fuel inspection, and delegated him the authority to proceed to draft a questionnaire in survey form to be sent out to the retail service station dealers.

Q. Did Mr. Price do this? A. Yes, he did.

Q. Did you at any time review the product of his work? A. Yes, I did.

Q. Can you identify that document, sir? A. This is a copy of a letter that was mailed to all retail service station operators from the Comptroller requesting assistance and cooperation in completing the survey forms that were mailed to them to try to get some measure as to the availability of motor diesel fuel in the State of Maryland.

Q. Is that the document that Mr. Price brought into you? A. This is the one that he completed and I approved for issuing.

(Mr. Woodstock) I'd like to offer that, Your Honor.

(Court) Admit it.

(Copy letter filed herewith as evidence as State's [Defendants'] Exhibit #B)

Q. Can you tell me, Mr. Coleman, to your knowledge what subsequently was done with the questionnaires that were mailed? (T. 493) How were they mailed? A. We used the registration file of the motor fuel inspection program which is computerized to print mailing labels of all the retail service station operators actively in that file at that particular time.

* * *

(T. 494) Q. Mr. Coleman, did anyone else look at this questionnaire prior to– A. Yes, I did show it to the Comptroller, tried to describe what we were trying to portray and get from the retail dealers as a response if any to the questionnaire.

* * *

(T. 495) Q. In your opinion would this survey form help you or assist you in collecting the data nec–that you felt would be necessary to reply to the Governor's request?

* * *

(T. 495) A. We designed the questionnaire with the cooperation of Mr. Price and his staff. Several members of his staff had been employed at various levels including retail service station operators, bulk plant and personnel. They felt that the material requested in the survey would help, assist the Governor in determining whether the complaints were valid that he had been receiving as to shortages at some retail stations.

Q. Can you tell us, Mr. Coleman, if any of the questionnaires that were mailed out were returned to the Comptroller's office? A. Yes, approximately fourteen hundred were returned to our office.

Q. And what happened to those questionnaires upon their (T. 496) receipt at the Comptroller's office? A. Upon a receipt in the Comptroller's office, Mr. Price's personnel started to assemble the responses from the questionnaires.

* * *

(T. 496) Q. Mr. Coleman, was there any other surveys prepared in conjunction with the Governor's request? A. There were follow-up surveys made where some retail service station operators went beyond the realm of the survey request; and proffered information above and beyond what we asked for. I specifically instructed Mr. Price to assign field representatives to personally interview those individuals.

Q. Subsequent to the mailing of the survey questionnaire to the retail service station dealers, did your division attempt to contact the major oil companies doing business in the State of Maryland? A. Mr. Price's staff and some of my assistants assisted in preparing a survey questionnaire to be mailed to the major oil companies.

Q. I hand you a document. Can you identify that document please? A. This is the questionnaire that we mailed to the (T. 497) major oil companies to obtain information.

(Mr. Woodstock) Your Honor, I'd offer that, State's Exhibit #3, I believe, or C.

(Court) C.

(Questionnaire filed herewith as evidence as State's [Defendants'] Exhibit #C)

Q. Now, Mr. Coleman, did you have a final approval or did you review this form before it was utilized? A. That is correct.

Q. To whom was that mailed? A. That was mailed to approximately twenty major oil companies that do the major importing and marketing in Maryland.

Q. And this was mailed after the retail service station dealer questionnaire– A. That's true.

Q. –is that correct? Did any of the oil companies to whom you had mailed the questionnaire return the questionnaire? A. The best I can recall eleven companies, I believe, returned the questionnaire, nine of them returned it fully completed. A couple of the companies objected to providing some of the information requested in there as being trade secrets and confidential information.

(T. 498) Q. After the receipt of these returns, did your office undertake to compile an analysis or report of that information? A. That is correct.

Q. Who was in charge of or responsible for doing that? A. Mr. Price was responsible for the analysis of the retail dealers and some of the analysis on the dealer–the surveys.

Q. I ask you to look at that document, sir. A. This appears to be the final analysis of the results from the retail service station dealer questionnaires.

(Mr. Noonberg) If the court please–

(Mr. Woodstock) I'd like to offer this into evidence, Your Honor, as the report prepared by John Coleman, Chief of the Gasoline Tax Division, response to the request by the Comptroller to comply with the request of the Governor.

(Mr. Noonberg) If the court please, we would object to its admissibility for a couple of reasons. One, I think Mr. Coleman just testified that Mr. Price prepared it and he did not, but more importantly it is about three levels of hearsay if what it purports to analyze is a response from an unnamed, unsigned individual returning a response to a questionnaire to an individual outside the court, then analyzed and compiled by someone out of the court and constitutes about three levels of hearsay.

(T. 499) (Court) Why doesn't it come in on the shopbook rule?

(Mr. Noonberg) I'm sorry, Your Honor.

(Court) Why doesn't it come in under the shopbook rule?

(Mr. Noonberg) Well, because I think that the witness has testified that this was not a regularly prepared report under the auspices of the Comptroller's office. It was a report specially undertaken and specially designed, and I think, therefore, could not come in under the shopbook rule. I would add, Your Honor, that the principal thrust of our objection relates to the admissibility to the truth of what is contained in it. I think that we have no dispute about the fact that what Mr. Woodstock has informed us and I think Mr. Coleman has informed us that this document was prepared and was at least submitted to some legislative committee. We do not dispute the fact that it was, if they say so, was so submitted. For a limited purpose and not for the truth of what it contains, we would have at least as far as Exxon is concerned, we would have no objection.

(Mr. Woodstock) Your Honor, may I address the point of the document?

(Court) Go ahead.

(Mr. Woodstock) The document is not necessarily (T. 500) being offered for the truth of its conclusions. The fact of the matter is the document is—was produced in the normal course of their business activities. Part of the Comptroller's responsibility is to respond and to reply to the Governor; and furthermore it was without question I might add by stipulation they've admitted the fact that this document was subsequently produced to the legislative committees considering the bill. And I'm not ask—and I have no way of knowing whether or not the respective legislators considered what was in that report, but it is part of the legislative history because the testimony and prepared speeches, which we'll seek to

introduce later on in our case, clearly make reference to this report being introduced, therefore, it should be considered part of the legislative history.

(Court) Admit it.

(Mr. Noonberg) I'm sorry, Your Honor.

(Court) I say I'm going to admit the document.

(Mr. Noonberg) May I just make one brief comment, Your Honor, and that is Mr. Woodstock did say he was not admitting it—he is not submitting it for the truth of what it contains and on that basis we have no objection.

(Court) All right, let's have it come in and not bat it back and forth any more.

(T. 501) (Analysis filed herewith as evidence as State's [Defendants'] Exhibit #D)

Q. Mr. Coleman, you also—I don't think you did testify—Mr. Coleman, to the best of your knowledge after you gave that particular report to the Comptroller, as I believe you previously testified to, did the Comptroller in turn pass it on to anyone else? A. At a later date, he submitted it to the Governor.

Q. Mr. Coleman, with regards to the second questionnaire to the major oil companies, to the best of your knowledge was there a report or analysis done of the returns to those questionnaires? A. That is correct.

Q. Whom in your division prepared that report? A. The analysis of the survey primarily was prepared by Mr. Price and with some collaboration I'm sure myself on the price surveys that were returned.

Q. I ask you if you can identify that document. A. This document consists of the analysis from the major oil company response to our questionnaire that we mailed to them; and it also contains the analysis of taxable and exempt gasoline sales for the calendar year '71 and '72 and the first six months of '73. This was prepared by

myself taken from the computer records with assumptions made in some instances by myself as to trade journal articles alluding (T. 502) to Ashland Oil, for instance, had the crude problems, trying to evaluate ups and downs in percentage of the share of a market that took place with some of the oil companies in an attempt to justify those statements. There are some statements that are in this report that were also tied in with the retail service station dealer survey which were prepared by Mr. Price.

Q. And was this document in turn presented to the Comptroller by yourself? A. That is correct.

Q. To the best of your knowledge did the Comptroller in turn send this on to the Governor? A. I'm positive he did.

(Mr. Woodstock) Your Honor, we'd like to offer this then as Defendants' Exhibit E.

(Mr. Noonberg) Your Honor, our position would be the same and I assume the court's ruling would be the same.

(Court) Yes, sir.

(Analysis filed herewith as evidence as State's [Defendants'] Exhibit #E)

Q. Mr. Coleman, do you as chief of the gas tax division in the course of your official responsibilities have any evidence whatsoever as to any of the specific Plaintiffs in this case or any other major oil company doing (T. 503) business in the state as to having misallocated their product between company owned and operated service stations as opposed to their independent dealer lease stations? A. No, we do not.

Q. Did you in the course of your investigation and this questionnaire activity on the part of the Governor receive any complaints from anyone regarding such allegations of misallocation? A. Yes, we did.

Q. Would you briefly describe the nature of those complaints? A. We had complaints from–

(Mr. Preston) I object to this and I don't know who he's talking about, who they talked to, don't even know whether complaints, alleged complaints were made to him or who made them.

(Court) This is not a report to the usual–

(Mr. Woodstock) Your Honor, if I may.

(Court) Form of business.

(Mr. Woodstock) I believe in the negotiated pretrial order for–now if it's necessary we're prepared to do so, but I don't really think the court wants us to, all of the information, the written complaints that came into the Comptroller's office with regards to the questionnaires (T. 504) and accompanying the questionnaires, all the work sheets that will be introduced through this witness and another witness, they're all there and we're ready to produce them if Plaintiffs would like us to lay the foundation for all the final reports and analysis; and we'll have to inform the court it's at least three or four boxes of documents. Now Plaintiffs have seen these and I think if they had objections to these documents they would have voiced it before we negotiated the pretrial order.

(Court) Mr. Woodstock, it's not the court's understanding that simply because a document has been seen by the adversary that it necessarily is an exception to the hearsay rule.

(Mr. Woodstock) Once again, Your Honor, I believe that it's an exception to the hearsay rule for these documents to come in as not for their truth but the fact that they were offered by the Comptroller to the Legislature, to their committees, they were received by the committees; and I think that makes it somewhat part of the legislative history to this bill or at least a considerations offered to the Legislature for enacting–

subsequently enacting the bill that is involved in this litigation.

(Court) Well, that wasn't your question though. Your question was entirely different, did he receive. (T. 505) Now you're offering a different premise and not one related to the nature of the objection as I understood it.

(Mr. Woodstock) I'll withdraw the question.

Q. Mr. Coleman, did your office undertake any special audits regarding possible misallocation during the period of shortage? A. Yes, we did.

Q. Could you identify those? A. We completed four audits, H. L. Mills, a jobber and retail service station operator operating in Hagerstown, Savon Service Station—

(Court) What was in Hagerstown? A. H. L. Mills.

(Court) Now—all right.

A. Holmes Oil Company, they operate retail service stations; and Midway Petroleum, they operated I believe twenty-one service stations in the Baltimore City area.

Q. What prompted you to undertake these audits? A. Mr. Mills did come in to visit with the Comptroller.

(Mr. Preston) I object, Your Honor, to what Mr. Mills said. Once again I don't know who it was or anything else.

(Court) Well, I'll sustain the objection.

Q. Mr. Coleman, I ask you to identify the documents (T. 506) in that folder for me. A. These are the work papers of our field auditor in regard to an audit of H. L. Mills retail service stations during the period of 1971, 2, 3 and I believe the first six months of '74, showing the purchases by suppliers.

Q. From where is that information obtained? A. This was obtained from Mr. Mills' records at his office location.

Q. I ask you to identify those documents in that folder. A. This is the audit of Midway Petroleum Incorporated in Baltimore showing the number of service stations they had in operation, the dates they were opened, the dates they were closed, the gallonage that Midway had purchased during the period of '71, '72, '73 and the first six months of '74 and the source of supply of the gasoline.

(Mr. Drogula) Your Honor, may we request the dates of the audits that were conducted he indicated?

(Court) Do you have the dates, Mr. Coleman? A. Approximately the month of July of '74.

(Mr. Woodstock) Your Honor, if I may, that was for the Midway documents.

Q. Do you have any date for the Mills'? A. December 31, 1974 covering the audit period of (T. 507) January 1, 1971 through December 31, 1974.

Q. Identify those please. A. This appears to be an audit of Holmes Oil Company, Incorporated at Washington, D.C. covering the period of January 1, 1971 through December 31, 1974, then showing the station locations, the date they were closed, the date they were opened, the amount of gallonage purchased from a supplier for the period of '71, '72, '73 and '74.

(Mr. Noonberg) Could you give the date that the audit was prepared, sir? A. I would assume it was after December 31.

(Mr. Noonberg) Of 1974? A. That's right, normally the audit covers—the thing covers a substantial period covers and it's closed out at December 31st.

Q. And that last file. A. This is an audit of the Aero Oil Company which operates the Savon stations and it covered the period of January 1, '71 through June 30th, 1974, again showing station locations, dates they were

opened and closed and the gallonage purchased from the supplier for the period '71, '72, '73 and six moths of '74.

Q. Under what circumstances were these audits undertaken by your office?

(T. 508) (Mr. Preston) I–

A. I'm not sure I understand your question.

(Mr. Preston) I don't either.

Q. Does your office normally undertake audits of this nature as part of its normal duties? A. We would audit Aero Oil in the course of our normal duties, Holmes Oil under our normal duties. I believe Midway would also be subject to an annual audit or every two year audit on special fuel sales.

Q. Did you request as chief of the gasoline tax division that these audits be made of these particular companies? A. To this extent, yes.

Q. For what purposes, sir?

(Mr. Preston) Objection.

(Court) What's the objection, Mr. Preston?

(Mr. Preston) Well, I suspect that what Mr. Woodstock wants him to say for what purpose is that somebody said something to him about it. I don't know, but I don't think the purpose is material. Whatever the audits show assuming that they're admissible and I don't whether they are or not, they would show. I don't see the purpose of the audits.

(Court) Up till now I haven't heard anything about–

(Mr. Preston) I don't know what–

(T. 509) (Court) –Midway, Holmes or Aero and are they parties to this suit?

(Mr. Noonberg) No, Your Honor.

(Court) Is the State maintaining that all oil companies are tarred with the same brush?

(Mr. Woodstock) The State's maintaining that during this period of time before the legislation was considered

and during the part of that period of time when the Comptroller's office was undertaking the investigation and survey at the request of the Governor and continuing thereafter that they did come across instances where independent retailers had their supply cut off by producers or refiners doing in the State.

(Court) By whom?

(Mr. Woodstock) And if–that's what in the audits, Your Honor.

(Court) All right, go ahead. Ask your next question.

Q. Mr. Coleman, how did you come in possession of these audits? A. By the manner of assigning a field auditor to specific detail of doing that type of audit on these locations. In the one instance based–on one of the accounts there and making the statement to the Comptroller and myself–

(Mr. Preston) I object.

(T. 510) A. –that he was experiencing difficulty.

(Mr. Preston)–as to what one of these people said to the Comptroller or to Mr. Coleman.

(Court) Well, I don't know that that's being offered for the truth of what was said so I'll overrule it.

Q. Mr. Coleman, can you generally describe for us please the contents and what these audits reflect with regards to these respective accounts?

(Mr. Greenwald) Excuse me, Your Honor, I–

(Mr. Preston) I –I object.

(Mr. Greenwald) –those documents speak for themselves if they are admissible and I'm not at all sure that they are.

(Court) I agree.

Q. Mr. Coleman, has your office ever performed any audits of any of the Plaintiffs in this lawsuit other than in the normal course of your regular monthly and quarterly duties? A. Yes, we did.

Q. Such as, sir? A. We conducted one audit of the allocation program imposed by Exxon Oil Company on thirty retail service stations, I believe, fifteen of which were company owned and operated, (T. 511) fifteen lessee dealers and which was done at the request of Senator Coolihan.

Q. Were the results ever conveyed to Senator Coolihan? A. I specifically assigned Mrs. Bates to the project of conducting the audit and upon completion sitting down with the Senator and reviewing its contents with the auditor of Finance.

Q. And how many Exxon stations were in fact audited? A. I believe if my memory is correct thirty.

Q. And what did they show? A. They showed that in comparing, I believe, the– of a three month period in '73 with a three month period in '72 that Exxon had fairly allocated petroleum or gasoline to those retail stations based on their formula, but I think there was one error which we considered human error involved in the thirty stations.

Q. Mr. Coleman, was the study and reports to the Governor that has been previously identified by yourself and introduced into evidence, were they prepared or designed in any way to support any pending legislation? A. No, to my knowledge I knew of no legislation pending at the time of the Governor's request for a survey.

Q. Mr. Coleman–

(Court) Just a minute. You say it was fairly (T.512) allocated. What do you mean fairly? A. Based on Exxon, Your Honor, having established a allocation program to fairly allocate gasoline to all levels of their retail trade, company owned and operated and lessee dealers. Many of the oil companies went into this type program before the Federal Government went into action and demanded a fair or equitable program of allocation. I vividly recall

Getty Oil also instituted a allocation program based on throughput and prior history of both commercial customers and retail and in the Getty case they also made a human error in their concept in that many of the farmers in Maryland were having shortages of gasoline and requested specific help from our office; and we determined with Getty's assistance also that the formula was based on the winter months which penalized the farmer in the summer months; and Getty promptly revised their computer program to improve the farmers' condition in Maryland.

(Court) All right, sir.

Q. Mr. Coleman, in the pretrial order it's stipulated that you were requested to draft a bill to correct certain alleged inequities reflected in these reports we've been speaking about and that have been introduced into evidence. Did you in fact draft such a bill? A. I did.

(T. 513) Q. For whom? A. For the Comptroller, Louis L. Goldstein.

Q. I ask you to review that document, sir. A. This appears to be the original draft that I presented the Comptroller.

Q. To the best of your knowledge, Mr. Coleman, after you submitted that draft of a bill to the Comptroller, do you have any idea what the Comptroller did with it? A. I'm sure–I'm positive the Comptroller sent it over to the Governor for consideration and introduction in the next General Assembly.

Q. I ask you to look at a letter and see if you can identify that letter and if you've seen it before. A. Yes, this is a letter from the Comptroller, Louis L. Goldstein, to Honorable Marvin Mandel, Governor of Maryland, dated January 7th whereby he is conveying two bills which he would like to have introduced in the session–this session of the General Assembly.

(Mr. Woodstock) Your Honor, I'd like to proffer the letter to the Governor from the Comptroller and the draft of the original bill which Mr. Coleman has testified to.

(Court) All right, sir.

(Draft filed herewith as evidence as State's [Defendents'] Exhibit #F)

(T. 514) (Letter filed herewith as evidence as State's [Defendants'] Exhibit #G)

Q. Mr. Coleman, to the best of your knowledge and information, was there in fact bills introduced in the '74 session of the Legislature which were similar to the bill you, had drafted and gave to the Comptroller? A. That is correct.

Q. Could you identify those bills? A. Yes, I can.

Q. Would you please do so? A. Senate Bill 465 was introduced by Senator Pine and is a copy of the bill or the original bill that I submitted to the Comptroller. House Bill 918 issued at a later date by Delegate Bonvegna is a mere image of Senate Bill 465.

(Mr. Woodstock) Your Honor, we'd like to offer Senate Bill 465 as Defendants' Exhibit H and House Bill 918 as Defendants' Exhibit #I.

(Court) All right, sir.

(Senate bill 465 filed herewith as evidence as State's [Defendants'] Exhibit #H)

(house bill 918 filed herewith as evidence as State's [Defendants'] Exhibit #I).

Q. Mr. Coleman, did you appear and testify on either of these bills? (T. 515) A. No, I did not.

Q. To the best of your knowledge did anyone from your office appear and testify on these bills? A. None from the Gasoline Tax Division. Comptroller Louis L. Goldstein testified.

Q. To your own personal knowledge did he present to the respective committees of the Legislature that he appeared and testified before on these bills copies of the reports and analysis that have previously been submitted into evidence? A. He did provide committee members the benefit of those analysis reports.

Q. Mr. Coleman, who within the Comptroller's office will be enforcing Chapter 854 of the Laws of Maryland of 1974 if it is upheld? A. I would assume the Gasoline Tax Division since it is an amendment to the body of the Motor Fuel Inspection Act.

* * *

(T. 517) OCTOBER 17, 1975

(Court) All right, Mr. Woodstock.

(Mr. Woodstock) Mr. Coleman.

DIRECT EXAMINATION (Continued)

By Mr. Woodstock:

Q. I believe we left off yesterday I had just asked you if you were familiar with the terms of and provisions of Chapter 854 of the Laws of Maryland of 1974; and I don't recall whether or not you responded to that question so for purposes of the record I'm going to repeat the question and ask you to respond. A. Yes, I am.

Q. Would you please give the court your understanding of the following terms as they are used in the Act, number one, producer or refiner. A. Producer or refiner in my opinion would include any person, firm, corporation, company that would engage in the practice of producing, refining, compounding and blending motor vehicle fuel.

Q. Major brand? A. Major brand would be gasoline marketed by a major oil company in numerous states with an extensive advertising program, advertising that brand or trademark.

Q. Any other characteristics of the major brand? A. Many cases that would involve credit cards, avail- (T. 518) ability to preferred customers and would be tied in to producing-refining.

Q. Secondary brands? A. Secondary brands would be a brand marketed by a major oil company under a brand other than their national advertised brand. We have several in the state. In the State of Maryland they appear to be mostly gas and go type stations offering no repair services.

Q. Unbranded retail service station? A. Unbranded retail service stations in Maryland would be those individuals that do not have any tie into any producer-refiner per se. They may obtain their gasoline from numerous major oil companies, market it under their own trademark. Normally these would not have credit cards available for their customers.

Q. Wholesalers? A. Wholesalers as defined in the Act refers to those motor fuel dealers that are registered under Section 135 of Article 56 of the Annotated Code. The definition of a motor fuel dealer is broken down into three categories, the first category would be any individual importing gasoline into the State of Maryland and making the first sale would be required to be licensed by our office, month – and file monthly reports and remit the tax. The second provision would pertain to any (T. 519) body importing gasoline into Maryland which not–has not had the Maryland tax applied to it and using that gasoline in its business. This would be termed a dealer-user. At present we have, I believe, six dealer-users in our files which are mainly taxi-cab companies which are obtaining gasoline in Virginia, importing it into Maryland and thereby are required to pay the tax. The third condition applies to those individuals that are producing, refining, compounding, blending, distilling motor gasoline in the State of

Maryland. We have presently twenty major oil companies registered as compounders as of June 1, 1975. These twenty companies have enjoyed compounding permission since 1961. Now they enjoyed it prior to that, but we had other individuals that were not engaging in these practices that I eliminated from the file down to twenty major oil companies in 1961.

Q. Retail service station dealers? A. Retail service station dealers are defined as those individuals operating a business that engages in the practice of dispensing motor vehicle fuels in the tanks of motor vehicles.

Q. Retail service station? A. That place of business engaging in the practice of making and offering and selling gasolines and motor vehicle fuels into the tanks of vehicles.

(T. 520) Q. And as used in Paragraph F of the Act apportion uniformly? A. Apportion uniformly would apply to allocation of motor vehicle fuels in a uniform manner based on establishing a formula of previous history of a service station on its throughput and its growth and what fuel is available to meet that formula; and all retail dealers supplied by a major company or oil company would uniformly distribute whatever gasoline is available proportionately and equally to all of its customers.

Q. Mr. Coleman, has the Gasoline Tax Division of the Comptroller's office promulgated any rules and regulations specifically pertaining to any of the sections of this Act? A. We have promulgated regulations pertaining to the orderly manner of divestiture under Sections B and C for the two periods.

Q. Sir, I ask you to look at that document and identify it for the court. A. This is a publication in the Maryland Register establishing the fact that we are holding public hearings and are promulgating regulations to establish a procedure for divestiture under the two provisions of the Act.

(Mr. Woodstock) Your Honor, we would offer this into evidence and point out that it's an exact copy right out of the Maryland Register.

(T. 521) (Court) All right, sir.

(Publication from Maryland Register filed herewith as evidence as State's [Defendants'] Exhibit #J)

Q. Mr. Coleman, have any additional guidelines, rules or regulations been promulgated pursuant to the Gasoline Tax Division's administration of this Act? A. We have not promulgated any other rules or guidelines under this Act at this time.

Q. Is there any specifc reason for not having done so? A. We didn't carry it any further due to the litigation of this case. It was impossible and we had no reason or right to expect the major oil companies to come in and participate in development of rules and regulations and guidelines.

This is the normal thing we do with the industry. We normally meet with them and discuss the things before finalizing them.

Q. Assume, if you will, that the remaining provisions of Chapter 854 are upheld, what would be the procedure utilized by the Gasoline Tax Division in implementing the provisions of this Act? A. I'm sure that we would immediately request the presence of the major oil companies doing business in the State of Maryland to meet in the process of promulgating any (T. 522) future regulations and guidelines in following the Act.

Q. Mr. Coleman, as Chief of the Gasoline Tax Division, your division will be charged with enforcing and administering the provisions of this law, is it your opinion that you are prepared to enforce the provisions of that Act? A. I believe we are prepared.

(Mr. Woodstock) No further questions, Your Honor.

CROSS EXAMINATION

By Mr. Noonberg:

Q. Mr. Coleman, I have a few questions if I might. I believe you testified that you drafted the bill that ultimately became Chapter 854, is that correct? A. That's correct.

Q. In connection with your drafting of the bill, you did not consult any outside economist to determine the economic impact of that—of those provisions, did you? A. That is correct, I did not.

Q. Indeed, sir, in drafting the bill you did not seek any outside expert advice concerning economic impact or competitive impact, is that correct? A. That is correct.

Q. Mr. Coleman, I have Exhibit A which is the letter of June 13, 1973 from Governor Mandel to Mr. Goldstein and I also have the June 29, 1973 letter which is Exhibit B and these letters state and I will read to you exactly "Specifically (T. 523) I would like to know whether company owned and operated filling stations are being given larger quotas of gasoline than privately operated and independent filling stations;" and from Exhibit B we have the statement "The enclosed questionnaire is designed to determine whether company owned and operated service stations are being given larger quotas of gasoline than privately operated independent service stations." Now I believe that you testified on direct examination that based upon the evidence that you had from the surveys that you found no evidence that any of the Plaintiffs in this case were misallocating gasoline supplies during the period 1973, is that correct? A. That is correct.

Q. And indeed during the period 1973 you—your office conducted, I believe, you testified two independent audits, one of Exxon stations and one of Getty stations and that as a result of those investigations you

found affirmatively that both Exxon and Getty were indeed allocating in a fair and equitable manner as between their company stations and dealer stations, isn't that correct? A. We performed the Exxon audit on thirty stations, not the entire universe of Exxon stations in Maryland; and that did indicate on those thirty Exxon was properly apportioning motor vehicle gasoline to retail stations, both (T. 524) company owned and leased dealer. In the Getty, we did not perform an audit. I didn't mean to allude to the fact we performed an audit. We did discuss Getty's problem with their allocation with them; and they were quick to realize that the formula was out of tilt in that you don't allocate to a farmer based on what he received in January, February and March because the bulk of his activity is in the summer months.

Q. As soon– A. Based–what knowledge we have of Getty they were properly allocating at that time.

Q. And as soon as you brought that seasonal problem to their attention, they corrected that? A. That is correct.

Q. So that it is fair to say, is it not, that the–as a result of your survey and in response to the question that you–that is contained in the first page of Exhibit B concerning fair allocation as between company operated and noncompany operated stores that you found no evidence of misallocation? A. On the allocation knowledge we performed, that is correct.

Q. You were also aware, are you not, sir, that as of January 15, 1974 the Federal Emergency Petroleum Allocation Act went into effect and that the Plaintiffs in this case and (T. 525) all of the other oil companies are controlled in their allocation practices by federal law, isn't that correct? A. That is correct.

Q. I believe you testified at you deposition that so far as you were aware there was no relationship between the

survey which is–was conducted and about which you testified on direct examination and Paragraphs B and C of Chapter 854, is that correct? A. I'm–

(Mr. Woodstock) Objection, Your Honor. What Mr. Coleman testified as to what the connection, if any, between the survey presented to the Legislature and the Legislature's ultimate enacting of the Act is kind of irrelevant because Mr. Coleman has not knowledge of what the legislators–what was in the legislators' minds.

(Court) How about that?

(Mr. Noonberg) If Your Honor please, I think that Mr. Woodstock's comments do not have any relationship to my question. My question was whether or not Mr. Coleman as chief administrator of the Gasoline Tax Division and the person who has just testified that he would be required to enforce the Act and is prepared to enforce the Act, whether or not he knows of the relationship between Paragraphs B and C of the Act and the survey information which was prepared.

(T. 526) (Court) All right, stated that way, I'll let him answer it.

Q. You may answer the question. A. Would you repeat it again?

Q. Yes, sir. A. At this point confused–

Q. Surely. I believe that I'm accurate when I suggest to you that in your deposition I asked you the question of whether or not there was any relationship between Paragraphs B and C of the Act and the survey results which you received as a result of the surveys which you conducted and I believe that you responded by saying so far as you were aware there was none, that you did not know of any; and I ask you that question again. A. Well, my answer would have to be the same naturally.

* * *

(T. 529) Q. And is it not correct, sir, that when you defined what a retail service station was you simply

eliminated the dealer and used the words out of 1 5 7 (a) making it a place instead of a person? A. I'm not sure I did it in that context but I described the retail service station as the place of business, that would pretty much be the wording in the law, that is correct.

Q. By the law you mean 157 (a), do you not? A. That is correct.

Q. All right. Ordinarily in the–what we'll call the jargon of the industry, Mr. Coleman, that is the petroleum industry, wouldn't you agree that stations like Scot, the Ashland chain in Maryland that were described in court, Kayo as described by Mr. Chandler, are not retail service stations because they give no service, but are merely gasoline stations? A. In 1969 I drafted the Motor Fuel Inspection Act after (T. 530) reviewing the motor fuel inspection laws of numerous states. The definition of a retail service station dealer was established embracing the definition of the place of business for the simple reason it had to be broad to cover marinas and all other facets of marketing that the petroleum industry engages in. We couldn't specifically spell out a service station having two bays as being the station and let a marina with a pump on the dock and one on the shore servicing automobiles escape the normal sampling and inspection purposes. The theory of the law was to protect the consumer and that he is getting quality petroleum products no matter where they're being dispensed from. The marketing practices of the major oil companies can change tomorrow with a car wash, a total wash, we couldn't keep repealing the Act and amending the Act to embrace all of the various facets that the industry may come up with so this was the nature and reason for the broad terminology.

* * *

(T. 531) Q. All right, sir, now when you define producer and refiner, I think I am correct that you then said any person that producing or refining, compounding or blending motor fuel, is that essentially what you said? A. Yes, sir, that is what I said.

Q. Beg your pardon? A. Correct.

Q. I note that in that instance, however, you left out the last three words of section 7 of 1 5 7 (a), those (T. 532) last three words being "in this State." Are they not? A. Section 7 of Section 1–Subsection 7 of Section 157(a) defines a manufacturer and refiner.

Q. Um hmm. A. Shall mean and include any person, firm or corporation engaged in producing, blending or compounding motor vehicle fuel in this State. I didn't, as I recall, define a manufacturer and refiner. I defined a producer-refiner as set forth in the Act. The manufacturer to us and in my opinion is the same as a producer. It is old terminology, it goes back to the early Twenties if you look in Section 135 as to the definition of a motor fuel dealer, the term is also used there. Presently, as I recall, there is one company advertising that they are a manufacturer of petroleum products; and in this law or definition it says in this State and Section 135 it says in this State also; and I did say we have twenty compounders registered under 135; and we also consider blending, if I may, essential and would classify anybody blending gasolines as a compounder administratively.

Q. I see. A.This is when you co-mingle Ashland and Connoco product in the same type, which while Connoco has a compounder's license, they might be in violation of Article-the fraud statute on rebranding.

(T.533) Q. Mr. Coleman, as I understand it, you're telling us that 157(a) the definition of manufacturer and refiner as you understand it does apply to 157(e), which is

Chapter 854, is that correct? A. I say that the term refiner – manufacturer-refiner is the same –

Q. I didn't ask you that. A. –as producer-refiner.

Q. I didn't ask you that. I'm talking about interpreting what this statute means. 157(a) is a series of definitions. A. That's correct.

Q. Do those definitions apply to 157(e), the statute under consideration in this court? A. I would say they would.

Q. You would say they would and I think you also said a moment ago that the word to you manufacturer is synonomous with the word producer– A. That's correct.

Q. –in this industry, is that right? A. That is correct.

* * *

(T.539) Q. Thank you. As you originally drafted this legislation, Mr. Coleman, did you not include the class wholesalers within the statute? A. My original draft included wholesalers and producer-refiners, that is correct.

Q. Why did you include wholesalers in the proscription along with producers and refiners? A. Well, it was my intention to include producers, refiners and wholesalers carte blanche, not to discriminate against one class as to another. It was up to the General Assembly to make that decision. Apparently the wholesalers were represented at the testimony in the hearings. At that time they were testifying I was not in the room. I did hear at a later date that they wanted to be exempt from it because some of the wholesalers being local jobbers had no investment or financial activity or engagement with the producer-refiner so they wanted to plea upon the mercy of the committee so to speak and amend themselves out and let the law apply to those that were entirely the producers and refiners.

(T.540) Q. Nevertheless, based on your surveys and your reports you felt that it was appropriate to include wholesalers along with producers and refiners? A. Very definitely because the wholesaler as defined in that particular subtitle which ties back to Section 135 which covers all motor fuel dealers whether they are a legitimate wholesaler in the jargon or they are producer-refiner manufacturer-compounder and blender. Most of these individuals, I might add, are not engaged in the practice of compounding and blending. They do not have that permission and have not since '61.

Q. There are wholesalers in Maryland, are there not, who operate retail service stations? A. There very definitely are.

Q. And some of the stations they operate are company operated and some are dealer operated, is that correct? A. Well, if you mean, for an example, Joseph Smith is a wholesaler, he may operate some of his stations and the stations that Joseph Smith owns and he may lease some of them out, that is correct. He can go both ways, simple as that.

Q. You have no information then as to why the Legislature of Maryland chose to make that discrimination? A.Not other than hearsay as to the general data that (T.541) these men were local businessmen, had no definite tie in with the refinery, based on their–that's to me is hearsay but that's what I heard and I think I testified to that before.

* * *

(T. 542) CROSS EXAMINATION

By Mr. Greenwald:

(T. 543) Q. Mr. Coleman, during the course of your examination you used the words engaged in compounding and blending and so forth a number of times; and those words appear in Section 157(a) in the definitions of manufacturer and refiner, is that correct? A. Pardon me? Would you repeat that? I recall the part using the word engaged in compounding and blending, the last part of the question I missed.

Q. All right, those words engaged in appear in Section 157(a) of the Motor Fuel Inspections Laws, is that correct? A. Yes, they do, in the definition of a manufacturer-refiner, compounding and blending.

Q. Now by using the term engaged in, you're referring to a regular or frequent practice? A. That is correct.

Q. All right, you are not referring to an incidental or occasional practice? A. That is correct. In fact in our analysis also after '73 when we volunteered the Truth in Advertising Act, this dealt with exchanges, exchange agreements. In '73 I think the major oil companies operating in this state, the majority of them, not all of them, increased their exchange activity beyond any proportion of the past or the future. I mean the past, say '70 or '71, so there was every reason to believe (T. 544) the exchanges that were filed with our office under that section of the law indicated that these companies were engaging in the practice of exchanging; and it was meeting the specifications of the inspection law but it was an active practice.

CROSS EXAMINATION

By Mr. Simon:

Q. Mr. Coleman, is it true that the statute has no application to a producer-refiner who sells gasoline in

Maryland in the same form which the gasoline crosses the state line? A. No, I wouldn't necessarily say that it's in my opinion, correct. If he produces and refines and imports it into Maryland, I would say that he would be covered under the producer-refiner provisions of the Act.

Q. But does– A. Whether he compounds or blends it.

Q. But isn't the Act limited to one who produces, refines, compounds or blends in Maryland? A. I would say anyone producing, refining, compounding or blending would be covered. It does say in Maryland, right.

* * * *

(T. 545) (Court) Anyone else? Mr. Coleman, I'd like to ask a few questions.

(T. 546) REDIRECT EXAMINATION

By Mr. Woodstock:

Q. Mr. Coleman, in your opinion would the provisions of Chapter 854 apply to the Plaintiffs in this litigation? A. Based on my knowledge of the practices they have engaged in in the past and in the current period, yes.

Q. Do you know if any of these companies have oil wells in the State of Maryland? A. There are no oil wells to my knowledge in the State of Maryland.

Q. Do any of these companies to your knowledge have refining ability, capabilities or actual refineries themselves in the State of Maryland? A. There are no refineries in Maryland producing motor vehicle fuel. The last one was probably Esso and I think they shut down that–

* * *

(T.547) Q. Mr. Coleman, to the best of your knowledge does the term manufacturer-refiner appear anywhere within the provisions of Chapter 854? A. Manufacturer-refiner?

Q. Pro—yes, manufacturer-refiner. A. It does not appear in the Senate bill that was introduced.

Q. How about as the law as enacted? Rather the Act in question in this litigation? A. The Act that was or the bill that was enacted does not include manufacturer-refiner.

Q. What's the word? A. It's producer-refiner that was put in.

(T. 548) Q. What is your understanding or definition of what constitutes producer? Just producer? A. Just producing motor vehicle fuel regardless of manner or method.

Q. How does one—as you knowledge of the petroleum industry, how does on go about producing motor fuel? Do they have to produce something else first? A. They would have to go through a refining process of crude oil to produce motor vehicle fuel.

Q. Does the word produce refer to the crude or does it refer to the gasoline? A. I would assume it refers to both producing the crude and producing the gasoline.

Q. And what was your definition of refiner? A. Refiner is to own and operate a refinery that is capable of producing motor vehicle fuel.

Q. Do the words to the best of your knowledge—do the words in this state any where appear in the provisions of Chapter 854 of the Laws of Maryland? A. They do not appear.

* * *

(T. 549) RECROSS EXAMINATION

By Mr. Preston:

Q. Mr. Coleman, you said that no Plaintiff in this case produces, whatever that means, motor vehicle fuel in the State of Marylamd, you know that as a fact, do you not? A. That's correct.

Q. And no Plaintiff in this case manufactures, whatever your definition of that is, motor vehicle fuel in the State of Maryland? A. Well, I wouldn't include manufacturing. Manufacturing could be the blending, compounding.

Q. All right, sir. A. Of premium and regular and that has been done.

Q. Let me limit this to my clients, Continental and Kayo, since I'm not familiar with all the others. If the Continental Oil Company brings motor vehicle fuel into this state and stores it at its Maryland terminal after it was refined somewhere else and it's moved here through the Colonial Pipeline into the Continental Oil Company terminal and nothing is done to that motor vehicle fuel in the way of mixing it with anything else at that terminal except to pump it into trucks where it's taken either to Kayo stations or to other persons, firms or corporations to whom Continental might sell that gasoline, then you wouldn't say that (T. 550) they are either manufacturing, compounding or blending motor vehicle fuel here, would you? A. Under that illustration I would say that is correct, but in fact I think there is—

Q. I've just given a—I'm going to go on from that illustration in a moment. Now you mentioned the fact that if they had an exchange agreement with the Ashland Oil Company they might be blending or compounding motor vehicle fuel in the state. A. That is correct.

Q. But I think you also said that if the gasoline that they were storing in their terminal here was fungible as between whatever they delivered to Ashland and whatever they delivered to Kayo or anyone else then they wouldn't be blending or compounding. A. Well, I don't know that I said blending there. It might be possible of blending, but not compounding definitely.

Q. There might be a possibility of blending? A. It depends on how the product was refined and if it was under the specifications of fungibility, I might add that the law requires Continental and all the Plaintiffs and every major oil company in this state to file their specifications with our office. I don't know of anybody that (T. 551) has filed its specs and says it's fungible. We are aware there are fungible shipments in the pipeline and there are segregated shipments in the pipeline.

Q. Well, if the–first of all, to make clear what the exchange agreement is with Ashland without getting into any specific terms, it doesn't mean that any gas, gasoline is changed in Baltimore, does it, but rather that Ashland has exchanged by delivering to Continental some place else some quantity of gasoline. A. There's always an offset in the exchange agreement.

Q. And here in Baltimore at the Continental terminal some of the gas that Continental has here they exchange or give to Ashland, isn't that correct? A. That is correct.

Q. Well, are you telling us that blending–if Continental does absolutely nothing to that gas whatsoever except to put it in a tank here in Baltimore, that the word blending would mean that they have blended the gasoline here? A. I said if it all came out from Continental's refinery and it was blended with the same specs. Continental's specs and Ashland's were identical, that would not constitute blending or compounding, but I believe there is a tank in the confines of the plant in Baltimore that has unleaded gasoline in it. That comes from other suppliers (T. 552) other than Connoco. So blending can be taking place in their plant; and I can't testify to the fact that it isn't taking place.

Q. All right, you're not testifying one way or the other. You say it can be taking place. A. If all of the

gasoline that went into that plant in your illustration were manufactured at your refinery, then Ashland can't be engaged in blending. The mere co-mingling under an exchange meets the requirements of a terminal agreement, then it would not constitute blending or compounding.

Q. On behalf of Continental or Ashland? A. That's right. That is correct.

(Mr. Preston) Okay. Thank you very much.

(Court) Anyone else? Mr. Coleman, I understood you to testify that you were the author of this bill and it was based upon the results of the survey of these various organizations that you sent out, is that correct? A.That is correct, sir.

(Court) And as a result of the survey you felt it was necessary to draft this proposed Act? A. No, sir, I didn't testify I felt it was necessary to draft the Act. The survey was mailed to all of the retail service station dealers and a separate one to the major oil companies to try to seek information for the Governor. We (T. 553) received statements back indicating various things. We did not have the time or manpower or the ability to spend endless hours to investigate the true facts of this portrayal in the survey. We presented the results of the survey as it was submitted to us. We prepared an analysis based on what the retail service station dealers said, what the major oil companies–

(Court) You presented it to the Governor? A. –and I presented this to the Comptroller.

(Court) Oh, to the Governor. A. No, the Comptroller.

(Court) Comptroller. A. Comptroller Louis L. Goldstein. He felt it important enough to draft legislation to present to the General Assembly for their consideration.

(Court) So it was Mr. Goldstein's decision rather than

your own? A. That is correct. He directed me to draft the bill.

(Court) And he said to draft the bill? A. That's correct.

(Court) Now is it your general duty in performing your function as Chief of the Division to draft legislation? A. It is the normal practice where we find problems (T. 554) in our existing laws for me to draft a bill which is normally submitted to the Attorney General's office for perusal for legal sufficiency and constitutionality.

(Court) Are you—do you have any past practices in drafting legislation? A. My twenty-six years in the Gasoline Tax Division, yes, sir, I have.

(Court) All right. Could you tell me what assistance you received from any outside source in— A. In drafting the bill, sir?

(Court)Yes. A. I received none, only my staff.

(Court) I see. A. Existing staff.

(Court) All right, thank you. That's all I wanted to know. Any other questions?

* * *

(T. 556) (Mr. Woodstock) If it please the court, before the recess I had indicated to the court I wished to proffer certain documents.

(Court) All right, sir.

(Mr. Woodstock) During recess they have been inspected by the Plaintiffs and if they don't have any objections, I'd like to proffer them and identify them.

(Mr. Noonberg) We would object, Your Honor, to the admissibility of these documents for the same reasons that we raised before. We think they're clearly hearsay and cannot be admitted for the truth of what's contained in them. We do not object to the fact that they're admitted for the limited purpose of showing that certain documents were in fact presented to the Legislature.

(Court) What are they, Mr. Woodstock?

(Mr. Woodstock) These are statements, two statements by Exxon officials, one before the Senate committee considering SB 465, and House committee considering 918, statement by Shell Oil Company to the House committee and statement by executive director of the Greater Washington (T. 557) Maryland Service Station Association to the Senate committee; and these are the only written statements available from the committee files in considering this bill was eventually—became Chapter 854; and I'm offering not for the truth but for the fact that these people did testify and that they did leave these statements and that possibly the legislators—Legislature had this before them in consideration.

(Court) All right, I'll admit them for that purpose.

(Statements filed herewith as evidence as State's [Defendants'] Exhibiit #K(l-4))

* * *

(T. 558) ARTHUR E. PRICE,

a witness of lawful age after being duly sworn, deposes and says:

(Clerk) State your full name and address.

(Witness) Arthur E. Price, 1807 Angleside Drive, Fallston, Maryland.

DIRECT EXAMINATION

By Mr. Cordi:

Q. Mr. Price, what is your present position? A. I'm chief of motor fuel inspection for the Gasoline Tax Division of the Comptroller's office, State of Maryland.

Q. How long have you held that position? A. Since September 30, 1970.

Q. To whom do you report? A. Mr. John K. Coleman.

Q. And as chief of motor fuel inspection, what are

your responsibilities? A. To enforce the sections of the motor—commonly referred to as the Motor Fuel Inspection Laws, Section 157 (a through u) of Article 56.

Q. Would you give the court a brief description of your experience prior to becoming chief of motor fuel inspection? A. Simply stated upon graduation from high school in Baltimore, I went to work with the fluid heat division of Anchor Post Products which was a manufacturer of oil burners, (T. 559) boilers and furnaces. I spent ten years with them in positions, design draftsman, laboratory technician, manager sales order department, salesman and ultimately district sales manager. I left Anchor Post Products in 1957 and went to work for Cities Service Oil Company, now known as Citgo, and started there on a cadet program that led me through a six-month training program as to their activities. I served in a retail service station, I managed a retail service station. I became a dealer sales representative. I was promoted to district sales manager. I served as a commercial consumer sales representative and the final four and a half years of which I was regional retail marketing manager in charge of all direct operations, retail operations, from the New York State line to the North Carolina line.

* * * * * * *

(T. 559) Q. It's been stipulated to in the pretrial order that you prepared the retail service station dealer questionnaire (T. 560) previously identified by Mr. Coleman. I ask you to explain to the court how was this designed. A. The questionnaire?

Q. Yes. A. The questionnaire was designed utilizing my knowledge, the best of my ability of the industry to which I had been associated so long and to attempt to encompass every facet that would have a relationship and enable it to accomplish the purpose for which it was intended.

Q. Have you had any prior experience in listing information of this type? A. Yes, with the oil company and it was a constant job in the final four and a half years; and it ranged in evaluating real estate for the purposes of service station construction, in the analysis and questionnaire, designed grand openings for service stations and eliciting and soliciting credit cards, credit card issuance and all other facets as it pertained to oil company retail service station activity.

Q. It's also been stipulated to in the pretrial order that over fourteen hundred and seven responses to the more than four thousand questionnaires sent out were received. Was a follow-up made to— A. No, sir, there was no follow-up made.

Q. Why was this not done? (T. 561) A. There just was not time. As a matter of fact, we held the total returns as long as we could in order to give what we thought was a maximum amount of time for the Governor—to respond to the Governor's letter.

Q. What was your responsibility with respect to the return questionnaire? A. I had the total responsibility for the return of the questionnaires from the standpoint of utilizing my staff and accounting for them, designing the work sheets, the staff sheets, the accountability of them and the ultimate—and ultimately the analysis of them.

Q. You prepared the results and analysis of the retail service station dealer questionnaires. Was there any information in this report which was not derived from the questionnaires? A. Yes, sir, there was information—additional information utilized in the analysis that over and above the questionnaires that were returned and that information would be information received from the field investigations that we made, from telephone calls received from dealers and other individuals, personal obser-

vations, comments to me by members of my staff as they travelled during that period of time the survey was underway.

Q. Did the results and analysis of the retail service (T. 562) station dealers questionnaire reach any conclusion with respect to the principal question asked by the Governor, that is, whether the shortage was real or contrived? A. No, sir, we simply stated the facts that we had obtained and that we accepted in good faith from the response. We added to that the other knowledge that we gathered by means that I just mentioned and then put our analysis together.

Q. You were unable to reach a conclusion as to that point? A. Yes, sir, we didn't feel that was our obligation to reach the conclusion. That was the conclusion to be reached by the requestor.

Q. With respect to the major oil company questionnaire which has been previously identified as Exhibit No. C, I believe, would you explain to the court how that was designed? A. In the same fashion in applying to my judgment and ability all of the facts and questions that would elicit the information in total. Both of these questionnaires were reviewed with the chief of the division; and with the assistant chief auditor who is now chief auditor of our division and one staff member prior to its actual implementation; and I think one or two minor modifications may have been made before it was produced and then it was produced.

Q. What was done with the major oil company questionnaires? (T. 563) A. It was mailed to the major oil companies of record.

Q. Did you receive replies from all the persons to whom you sent the questionnaire? A. No, sir, I believe we received replies from either nine or eleven. We did

receive requests for an extension of time, it would be late; and some were late and some didn't reply even though they requested an extension.

Q. Was a follow-up done to try and secure responses from those who did not reply? A. No, sir.

Q. The questionnaire itself was dated July 17, 1973, and I note that it specifies it must be returned by July 31, 1973. What was the reason for that relatively short period of time? A. Well, we had a target date that we wanted our analysis finished by mid or not later than the end of August in order to fulfill the Governor's request. It wasn't one that we could hold on to for six months or six years. Just a judgment factor when it would be finalized.

Q. Would you please explain to the court how the analysis of major oil companies questionnaire previously identified as part of Ex–of Defendants' Exhibit No. E was prepared? (T. 564) A. The analysis was prepared by Mr. Coleman and myself. Mr. Coleman prepared the bulk of the analysis. I assisted him. It was prepared by reviewing each of those nine or eleven questionnaires that we had and analyzing the information thereon.

Q. And did this analysis also reach any conclusion as to whether or not the shortage was real or contrived? A. No, sir, we didn't attempt to reach any conclusion. We attempted to gather information and submit it as requested for whatever use the Governor wanted it for.

Q. Why was not the analysis of the two sets of questionnaires done together? A. We attempted to do this and due to the time element of the late response by the major oil companies, we decided to do them individually since we were approaching our deadline per se; and hence they got done separately.

Q. Mr. Coleman previously testified that it was he who

prepared the initial draft of what ultimately became Chapter 854 of the Laws of Maryland 1974. Did you participate in this process? A. No, sir.

Q. Did you testify on either Senate Bill 465 or House Bill 918 which have been identified as Exhibits, Defendants' Exhibit No. H and I, while they were before the Legislature? (T. 565) A. No, sir, I did not. I was on assignment to the Energy Policy Office at the time.

Q. You testified that you're responsible for administering the Motor Fuel Inspection Law. Assuming that Sections B and C of the Act in question here are ultimately upheld, will you be responsible for its enforcement? A. I would assume that I would, sir, because it is within that section commonly referred to as the Motor Fuel Insp ction Law, that is, 157 (a through u) and would be our responsibility and our program.

Q. Are you familiar with the provisions of Chapter 854? A. Yes, sir, I am.

Q. Are you prepared to enforce the law? A. I think we're sufficiently prepared to enforce the law, yes, sir.

(Mr. Cordi) No further questions.

CROSS EXAMINATION

By Mr. Noonberg:

Q. Just a couple of questions, Mr. Price. Is there anything in either the service station dealer survey or the major oil company survey which leads you to the conclusion that there is some relationship between company operated stations and a detriment to the public welfare? A. No, sir.

* * * * * *

(T. 566) JAMES M. PATTERSON,

a witness of lawful age after being duly sworn, deposes and says:

(Clerk) State your name and address.

(Witness) James M. Patterson, 2431 North Dun Street, Bloomington, Indiana 47401.

DIRECT EXAMINATION

By Mr. Woodstock:

Q. Dr. Patterson, what is your present occupation? (T. 567) A. I am professor of marketing and chairman of the Department of Marketing in the Graduate School of Business at Indiana University in Bloomington and Indianapolis.

Q. Doctor, how long have you held that position? A. Three years as chairman, four or five years as professor.

Q. Would you briefly describe for the court what that position entails, the duties and the responsibilities? A. Well, the professor role involves teaching classes in marketing management and marketing strategy and the public policy towards marketing. The chairmanship involves the administration of the Marketing Department, personnel matters, curriculum matters, these types of things.

Q. Will you please give the court a brief description of your eduational background indicating what degrees you hold, from where they were obtained and when? A. I attended the United States Merchant Marine Academy at King's Point and received a Bachelor of Science degree in marine transportation; and I attended Cornell University and received the MBA in—the B.S. was '48, MBA was 1954 and then I continued at Cornell for the PhD and received that in '61.

Q. Can you please give the court a brief description of any prior teaching experience you may have had? A. I had a faculty appointment at Northwestern University from '57 to '60 and then in 1960 I moved to Indiana (T. 568) University and have been there since except for a visiting appointment back at Northwestern in '67.

Q. What courses are you now presently teaching at Indiana? A. I teach a graduate course in marketing management.

Q. And basically what's involved in that course? A. The development of marketing strategies and marketing policies from the corporate firm's point of view.

Q. Dr. Patterson, have you ever undertaken any research in the area of petroleum? A. I have. In 1969 Professor Fred Allvine, who was at Northwestern, and I began a study of competition in the gasoline industry and that ultimately led to a book called COMPETITION LIMITED, was published, I believe, in '72 and then again Professor Allvine and I collaborated on a study of the gasoline crisis in '72, 3 and 4 and that resulted in a book called HIGHWAY ROBBERY, which was published in '74.

Q. Have you published any other books or papers regarding the petroleum industry? A. Well, I have published a paper, I guess it's not yet published since it hasn't come out, I've given a paper which is to be in a book published by the University of Vancouver or Victoria in British Columbia and I have formed an article with Professor Allvine and it appeared in BUSINESS (T. 569) HORIZONS.

Q. Are you currently working on any other books or papers? A. I'm in the process of trying to put in final form a paper on the effects of the structural changes in the petroleum industry on the marketing practices of the

firms in the industry and that hopefully will result in a paper to be delivered at a conference and ultimately published in November of this year.

Q. Have you ever published any other books or papers outside of the petroleum industry but dealing with economics or competition? A. Well, I have – I'm the co-author of a textbook in marketing and I have published a couple of articles on conglomerate diversification that involved matters of this sort. I have written on questions of corporate responsibility and on questions of the regulation of business.

Q. Dr. Patterson, have you ever been the recipient of any honors, fellowships or awards? A. During my years at the Academy, I held a scholastic star for academic excellence. At Cornell I earned the MBA with distinction. I received a Teagle Foundation scholarship while a graduate student and my last year at Cornell I was granted a Ford Foundation dissertation scholarship.

(T. 570) Q. Dr. Patterson, have you ever appeared in court as an expert witness prior to your appearances in this case? A. Yes, sir, I've appeared in several cases involving the petroleum industry and one involving the movie industry. I beg your pardon on that. I have been involved in them and not all cases did I appear in court. The only times I've appeared in court is in connection with the oil industry.

Q. Can you give us a brief description of those cases? A. The movie case involved a private anti-trust suit against the Big Seven distributors and a couple of exhibitors in Indianapolis by an independent exhibitor. That one I was not used as a witness in court, but it ended in court. In the case of–there was a trial in St. Louis involving a zoning ordinance of the Univeristy City of Missouri and that was a case between Texas Discount Gasoline Company and the city of–University City of

Missouri to look at the constitutionality of a zoning ordinance restricting the posting of price. I was a witness in a trial in Louisville between the CSC Oil Company and several independent private brand marketers there over a below cost sales statute problem. I appeared as a witness in an injunction hearing before the District Court in Philadelphia on the Phillips and an oil company. I'm involved in a case which is supposed to come to trial within the next two weeks between Offski Oil—Offski Gasoline and (T. 571) OKC Petroleum in Minneapolis; and another case coming in December 7th or 8th in Honolulu involving Union Oil.

Q. Dr. Patterson, have you ever been requested to testify or have you testified about the tend in marketing before any legislative body or committee of either the Federal or State governments? A. I have. The most recent testimony was before the Senate's Anti-trust Subcommittee on September 23, I believe it was.

Q. What was the nature of those hearings? A. In all cases they were hearings looking at the competition and marketing practices of the oil industry.

Q. I hand you a paper and ask you if you can identify that. A. (Looks at document).

Q. Would you briefly describe to the court what's contained on those papers? A. That's a cirruculum vitae which is a few months old that I prepared to use when I have requests for vitum.

(Mr. Simon) No Objection, Your Honor.

(Mr. Woodstock) Your Honor, we'd like to introduce this as—

(Clerk) Defendants' L.

(Curriculum Vitae filed herewith as evidence at States's (T. 572) [Defendants'] Exhibit No. L)

Q. Dr. Patterson, when you testified that you've

testified before Congress, would you tell us at whose request you appeared and testified? A. I've always been invited by the Congress itself by the chairman of the subcommittee that was holding the hearing.

Q. For example, if you will, this last hearing that you've testified that you appeared and testified before for the Senate? A. Those hearings were conducted by Senator Bayh in the illness of Senator Hart; and I was invited by Senator Bayh.

Q. Were you ever paid a fee for testifying at these hearings? A. I've never been paid a fee to testify.

Q. How about expenses and travel? A. The committee for academic witnesses paid me travel and a per diem fee.

Q. Dr. Patterson, approximately when were you retained by the State of Maryland to serve as an expert witness in this case? A. I don't have the exact date of the retention. I noticed in my diary this morning that you and I had our (T. 573) first meeting on March 12th of this year.

Q. And after you were retained by the State as an expert in this case what work did you speciifically do in connection with this case? A. I have primarily reviewed documents pertaining to the case developed upon discovery and I have looked at documents in the Gasoline Tax Division of the State and I have looked at th literature with respect to the industry and have tried to understand something about the nature of competition in the State of Maryland.

Q. And in your previous books and publications that you testified to having published concerning the petroleum industry, can you tell us the viewpoints or the discipline involved in these books? A. Well, I'm not quite sure how to phrase that. The point of view is from my own discipline as a professor of marketing. I have

been taained in economics and, therefore, I am concerned to use the model of competition as the basis for evaluating the implications, arrangements and practices, but it's the practice of marketing, I think, to look at other things as well, namely, the variety being offered, the—and things of this kind as well as just plain competition, innovations, new product developments, increases in a consumer convenience, these matters to be used as criteria for judging (T. 574) the arrangement or practices being evaluated.

Q. Dr. Patterson, are you familiar with Paragraphs B and C of Chapter 854 of the Laws of Maryland of 1974? A. I've read them several times, yes.

Q. And have you formed an opinion as to how paragraphs B and C of that Act will affect competition in the retail marketing of gasoline in the State of Maryland? A. Yes, sir, I have.

Q. Sir, what is that opinion? A. In my opinion those two paragraphs will tend to enhance and to preserve intertype competition and, therefore, will increase the competitiveness of the gasoline market and will, therefore, increase the benefits that accrue to the driving public that come from increased competitive activity.

Q. You use the word intertype competition. Would you please define that for the court? A. In the gasoline industry, there tends to be several distinct types of marketers being persons referred to here during the trial the major branded marketer, the semi-major or a integrated refiner-marketer and then the non-integrated private brand marketer. In studying price and other forms of competition in this industry, one finds that competition between the major brand actors essentially results in the (T. 575) proliferation of non-price forms of competitive actions and that the sole source of price competition in the marketing of gasoline comes from the competition between types of marketers, namely, the

private brand, non-integrated marketers and the major brand marketers? and it's this intertype, between type competition that the two paragraphs of the law tend to enhance.

Q. Dr. Patterson, do you draw a distinction between the latter group you defined there and I believe you called them the independent type or the non-major competitor; and you made a distinction between non-integrated and, I believe, was it private branded—do you draw a distinction in the characteristics in which they act in the marketplace? A. I do—I think it has nothing to do with the kind of people they are, but the situations in which they find themselves. The major marketer has a heavy investment and a particular form of distribution, he is closely intertwined with his competition through exchange agreements and joint ventures. The nature of that form of competitive relationship is one which makes price competition too aggressive and in a sense self-defeating so that they would be motivated not to use price because of the structure of the market and their relationship would be by themselves. On the other hand the smaller, less committed, more flexible, non-integrated (T. 576) private brand marketer finds that the principal weapon at his disposal is price and he understands his position as being one where he's probably able to get away with cutting price, not be clobbered immediately; and the result is that he finds in his situation price — cutting the price to be a much more effective marketing instrument than either the integrated refiner-marketer who sells at a discount but who doesn't try to extend that discount and the major brand marketer who finds that his situation is such that to use the price is self-defeating as a primary marketing competitive tool.

Q. Dr. Patterson, would your opinion be the same

even to those independents who are integrated refiner-marketers as well? A. I—I've been troubled by this since the deposition and the question of whether it is true, in my opinion it is that the integrated refiner-marketers who are—who tend to market at a discount also find it in their interest not to be aggressive in price. They tend to be, if you will, passive price takers. They're not rich enough, strong enough or adequately endowed with economic rent from the crude level to justify the investment in branding and in the majors' kind of marketing, but nevertheless they are so closely interconnected with their major competitiors and with the (T. 577) that they find that aggressive price competition is not the most profitable route for them to take. They're too big, too interdependent to use price. The only marketer who can use price in this industry and is the one who thinks he can get away with it by a virtue of his independence and by virtue of his smallness and by virtue of his geographical diversity.

Q. Dr. Patterson, were you in court Wednesday when Dr. Levitt gave his testimony? A. Yes, sir, I've been here from the beginning on Wednesday.

Q. Do you recall during Dr. Levitt's testimony his discussion of the wheel of retailing theory? A. Yes, that's an idea that Professor McNair from Harvard made popular at the commencement address he gave at the University of Pittsburgh some years back, around '56 or 7. It has some currency in marketing, but there are a number of people in the field who have pointed out exceptions to it, notably Professor Stanley Hollander of Michigan State University. It's about on par say with Marxie and Ballard on materialism. It's an idea, it's kind of way of thinking about things but I think as a scientific concept it's lacking.

Q. And while you were in the court room you've heard various testimony from some of the Plaintiff oil company executives to the effect that if B and C were upheld that they (T. 578) may well cease to do business in the State of Maryland, is that correct? Do you recall—A. I heard that testimony. I heard it from, I guess, both Scot—

Q. In your expert opinion of the competitive process as it would be affected by B and C of the Maryland Act, do you think in the normal—do you have an opinion as to the form or shape and the content of the various actors that would perhaps appear in the Maryland market as part of this normal competitive evolution and the effects of B and C on them? A. I don't want to be in a position of saying that the people who testified here aren't saying what they believe they would do and there are probably some marketers who would leave. I'm not at all sure that all of those stations would completely leave the market, they would be sold, many if not most of them would be reused as service stations by other organizations, in fact it doesn't prohibit—the law—the section does not probhibit the direct operation of service stations but only the direct operations by refiner-marketers, and, therefore, nonintegrated marketers would tend to be prime customers for those stations and they would possibly appear as parts of nonintegrated chains.

Q. Dr. Patterson, do you have an opinion as an expert (T. 579) on the effects of B and C of the Maryland Act as to having any adverse effects on the development of the innovative techniques about which we've heard testimony during this trial? A. Well, I think it's with any piece of change there are costs and benefits. I have no doubt that in the sense of somebody's presentation that has been talked about by attorney from Gulf and the pretrial statement by Shell on this some of these things would to

some extent be handicapped, but it seems to me that if one looks at innovation in this industry as well as other industries one finds that the bulk of innovations seem to be coming from outside the mainstream of the way that the industry is run. For example, the discount store came from outside, the idea of the discount store came from outside; the idea of self-service in this industry has been pioneered from outside. Most of the practices that were referred to as innovations in the statements of the Plaintiff companies in the pretrial statement have been extensively demonstrated by nonintegrated marketers who—so it doesn't seem to me that it would effectively stall innovation.

Q. Dr. Patterson, have you formed an opinion of what effect, if any, Paragraphs B and C would have on retail gasoline prices in the State of Maryland? A. To the extent that intertype competition is increased, the result would be a reduction in the margins that go to the (T. 580) jobbing and retailing function. The price of gasoline unfortunately is going to be heavily determined by the cost of crude in the future; and that is largely beyond the public policy of the United States or effect at this moment and so I—the level of price is going to be heavily influenced by decisions made by OPEC. The margins, however, will be heavily influenced by the extent of competition and in my opinion those margins will be narrower by an increase in intertype competition.

Q. And, Dr. Patterson, have—during your time in court here have you heard the testimony presented by the various experts of the Plaintiffs regarding the effects of Paragraphs B and C of this Act as creating barriers to entry or potential entry for new actors in the Maryland market? A. I've heard that testimony.

Q. Have you formed an opinion as to the effects of Paragraphs B and C of said Act on the potential entry of

new competitors or new actors in the Maryland market? A. Well, it will have mixed results. I have no doubt that those witnesses testified correctly that certain actors in the system will find it unattractive to enter the Maryland market. On the other hand because the effects of these two paragraphs will tend to protect certain kinds of actors who would otherwise find it awkward to compete in this market, (T. 581) they will be induced to enter so that some will not enter, some will, I think on balance that the problem of entry is not a serious consequence of this law.

Q. Dr. Patterson, in your opinion will the divestiture and divestment provisions within B and C of the Maryland Act provide a mechanism to best accomplish this—the benefits to competition which you testified to? A. I guess I'm reluctant to call it divestiture requirements, all that it does and my understanding, Mr. Woodstock, is to restrict direct employee operations by integrated firms, refiner-producers and I'm sure if the Maryland Legislature were the United States Congress they might have chosen another route. It turns out the states trying to regulate in this direction are restricted to those activities that are in their dominion and it seems to me that it is not an unrealistic approach to try to deal with the consequences of vertical integration and all intertype competition and that it would be an effective statute to increase intertype competition. I'm not sure I answered exactly what you had in mind.

Q. Dr. Patterson, in your opinion is there any particular advantage of the public in permitting company owned and operated service stations? A. Yes, there are advantages to the public for the reasons that the witnesses the past week have indicated. There (T. 582) would be advantages to that.

Q. Do you feel that on balance the elimination of company owned and operated service stations will adversely affect overall competition in the retail market in the State of Maryland? A. I do for two reasons. The increased direct operation of service stations will first permit the immense windfall profits from the crude price increases of vertical integrated major oil companies to be focused more effectively on the price competitor; and secondly, the more direct operation of both the major oil companies and the semi-majors or refiner-marketers means that less and less gasoline is going to be coming onto the unbranded marketers and as a result the supply of the competitive gas buying situation is going to become tighter and tighter and as a result will limit his competitive activities so because of the impact on supply, on balanced integration which direct operation reflects; and because of the—based on being able to more effectively focus windfall profits on typing competitors for these reasons I think without this kind of safeguard the intertype competition will be lessened and with that tendency will be checked.

Q. Dr. Patterson, based on your research and study of the petroleum industry, will you tell the court what has historically appeared to be the most profitable level of an (T. 583) integrated oil company's operations? A. Well, until the events of the last year and a half the crude production level was most profitable and probably still is.

Q. And is this true today overall within the petroleum industry? A. Well, crude production is still extremely profitable; we have a very unnatural situation in the petroleum industry at the moment with price controls remaining, with an entitlements program and price controls on crude and with the moment margin an effectual retail price controls such as prices are below the ceilings and, therefore, don't seem to be influencing the

price, but the industry is being stifled at the moment by a government intervention.

Q. What is your overall opinion as to the effects of government controls upon—the current controls, for example, in existence upon competition within the petroleum—sale of retail petroluem products? A. Well, a major consequence of the level of crude pricing system has been to—have a tendency to dry up the supply of unbranded gasoline to the price marketers. The logic of the incremental barrel which was mentioned by witnesses this week has been in a sense overruled by the fact that an incremental barrel has to be produced out of expensive (T. 584) oil instead of cheap oil, and, therefore, the—those refiners do not have self-sufficiency in crude find themselves in a strain not to produce gasoline much beyond their own requirements, at least during the months of April, May, June this resulted in a distinct tightening of the supply of unbranded gasoline and a very significant rise in the stock market price for unbranded gasoline.

Q. Dr. Patterson, I think it might be helpful to the court since you have been discussing competition perhaps in you would give us a capsule description and definition of what you mean when you use the word competition. A. I'm using the term in the sense that I think the economic witnesses during the week have used and I'm talking about the rivalry between firms for customers in the marketplace.

Q. Is it normal or would it be consistent with your normal view of the competitive process that government should interfere and offer some protection or shield to the certain actors within that competitive process? A. Well, I think the government has a role of maintaining a rules of the game because there is a tendency with a complete handsoff policy for on occasion for competi-

tion to be lessened or weakened by the evolution of the process so—but it seems to me the government's role is in preserving the vigor of the process rather than preserving actors or (T. 585) this sort of thing so I do see a distinct role it seems to me the anti-trust rules—anti-trust laws are a prime example of the appropriate approach that the government should take to the maintenance of competition.

Q. Would it be your opinion that the Paragraphs B and C of the Maryland Act as it would affect competition would be an appropriate government role in that context? A. It seems to me they are consistent with the philosophy of trying to maintain competition as a regulator of economic activity.

Q. Why—is there any reason why this would be necessary in this particular area of competition, the retail marketing of gasoline? A. Well, it turns out that the financial power of the integrated firm can be focused through those price supports on firms—nonintegrated firms making trouble by ousting price and trying to take a bigger share of the market. To the extent that those practices tend to dampen that competitive gas buyer's interests in trying to get a larger discount that in a sense frustrates the competitive process.

(Mr. Woodstock) No further questions, Your Honor.

CROSS EXAMINATION

By Mr. Simon:

Q. Professor Patterson, you deposition was taken in this case, was it not, on August 4, 1975. A. August 4 and 5, I believe.

Q. August of nine— (T. 586) A. Yes, sir.

Q. Since that time have you conducted any additional research on gasoline marketing in Maryland? A. I have

looked at the materials in the gasoline tax booklets and I have looked at a study prepared by Professor Allen Page. I have read about—what I could find about Maryland so I've looked at records of the case and materials that have been produced on discovery and that sort of thing.

Q. You said just a moment ago that you looked at what you could find about Maryland. What did you find about Maryland that you looked at? A. Well, I've now a little better picture of who the actors are and the system than I had at that time. I know something about the firms, I have some better feel of the geography of the state. I know something about the exchange agreements in this state at this time.

Q. Now, sir, in your testimony you talked about price takers and price setters. A. Yes, sir.

Q. Who are the price takers in Maryland? A. It's very awkward for anyone to look at a still picture of a market especially in a market which has been so distorted by the federal regulations to really see how competition might normally work in this market. I am not able (T. 587) to idenfity in the way I would like to what's the price behavior in a—the changing price behavior of the actors in this market would be. This is one of the great difficulties of coming into the market in an unnatural period and trying to look at it and see. We do not have normal price behavior now, and, therefore, it's not possible to really identify those actors.

Q. Well, whether you take the present time or the Sixties or the early Seventies or any period of time that you desire to take, can you identify for me who the price setters are or ever have been in Maryland.

(Mr. Woodstock) Objection, Your Honor, the question is assuming facts not in evidence. The witness could not

testify as to knowledge of the Maryland market prior to the time that he was retained as an expert witness.

(Mr. Simon) Well, I submit, Your Honor, that his—it goes to his capacity as an expert on Maryland marketing.

(Court) All right, he said he looked at the records in the tax office and he didn't say when. So I'll let him answer it if he can.

A. The when was in September, Your Honor, the period before Labor Day. The—I have no way of identifying who the these actors are in the state now because I don't have any retroactive reference to look at. All I can see now is a still (T. 588) picture of how the market looks under unnatural conditions.

Q. My question is as of any time can you tell me who the price setters are or have been in Maryland? A. Well, since I didn't look at Maryland before, I cannot.

Q. Can you tell me as of now who are the price takers in Maryland? A. The same answer would apply, sir, since I don't know how these people would behave in setting prices under normal conditions and we don't have normal conditions since I've been in this case, I can't tell you that.

Q. Do you know, sir, whether BP Gas and Go stations are price takers or price setters in Maryland?

(Court) Excuse me, Mr. Simon, this jargon leaves me a little puzzled. Can you ask the Professor to define what he means by this?

(Mr. Simon) Yes, sir. I apologize, Your Honor. We took his deposition and I was familiar and I—

Q. Would you please define, sir, what you mean by price setters and price takers? A. I don't have a formal definition but I'm trying to distinguish between those—every firm in the market obviously has a price but some firms tend to be aggressive in setting the price and others

tend to take whatever the market gives them and ride with that so I'm trying to distingusih between (T. 589) those who initiate the going price and those who merely passively respond to whatever that market price is.

Q. Now, sir, can you tell me whether BP is a price setter or a price taker under your definition? A. I cannot in Maryland.

Q. Do you know whether Kayo is a price setter or a price taker? A. I know of no price setters and price takers in the State of Maryland.

Q. And no matter whom I name your answer would be the same, is that correct? A. That's right, sir.

Q. Now you testified on direct examination that you and Professor Allvine wrote the book COMPETITION LIMITED; and is it not true, sir, that the research that you did for this book consisted of wholly reading materials in libraries and conversations with members of SIGMA meaning a acronym for Society of Independent Gasoline Marketers? A. You're talking only of my role or both people—

Q. Take first you— A. —or are you saying is there anything else in these besides that?

Q. Take first your role, sir. A. My role is essentially as you described it. I (T. 590) participated in a survey of prices in St. Louis, but that was the only price survey that I participated in. Professor Allvine conducted the surveys in basically the other cities.

Q. And it is true, sir, that your research consisted of reading materials in libraries and talking to members of SIGMA? A. I guess with one or two exceptions we talked to, of course, someone from American Oil and I think Mr. Allvine talked to someone from Shell.

Q. Now, sir, is it not true that the members of SIGMA are the owners of large chains of salary operated, private brand stations? A. As far as I know, that's true. There are

some chains that are owned by other companies who are members of SIGMA so that there would be oil company chains, secondary brand chains also as part of the SIGMA membership.

Q. But they would all be selling under a private brand or– A. A secondary private brand, that is right.

Q. And they are all salary operated, the chains, are they not? A. No, not all of them.

Q. Do you know of any that aren't? A. I believe, for example, Zephr is not.

(T. 591) Q. Any others?

(Court) What was that, sir?

(Mr. Simon) Zephr.

A. Zephr which is a brand of J. D. Street, the president of SIGMA last year who later was–is a chain. There are some who have mixed operations. I don't have a list in front of me. Perhaps if I had names, I could be a little more specific, but there are–I would grant your position that dominant view–the dominant operating style of its members is direct operations.

Q. And is it not true, sir, that the members of SIGMA generally became successful millionaires and developed the large chains of private brand stations in the last fifteen years? A. It was a post World War II success story, yes.

Q. And the active members all became millionaires out of it, did they not? A. I haven't seen their financial records. A very large of them have been–become very wealthy as a result of pursuing this strategy.

Q. And is it not true, sir, that the book was subsidized by SIGMA? A. In an indirect way, that is true. The SIGMA had a committee which made a grant, a research grant, to Northwestern University, which included funds to cover travel (T. 592) expenses, summer salary for myself and Professor Allvine, research assistance from the

graduate program there and overhead on the project, the university and with that research grant we were able to get around the country and talk to people.

Q. Now, sir, your second book, HIGHWAY ROBBERY, is it not true that at least roughly fifty percent of what's in the second book is just taken out of the first book? A. The part that describes the market behavior, I'm sorrry I can't answer the percentage, I have a work count, but the part that relates to description of marketing practices of the firms is a condensation of the material in the first book, that is true, sir.

Q. And is it not true, sir, that the second book was subsidized by the Council for–of Independent Petroleum Marketers? A. I think it's gasoline marketers.

(Court) Council of what, sir? A. Council of Gasoline Marketers. This is a group, Your Honor, that consists of something around twenty of these true nonintegrated independent marketers, not affiliated in any way with major brands except to supply relationships and the Council consists of the chief executive of those firms. Again that group made a grant to Georgia Institute of Technology and I assume it was along the same lines, namely, a (T. 593) paid salary to Professor Allvine and myself when we took off time from teaching to work on the book and it covered secretarial and travel expenses and graduate student expenses and it took a big hunk of overhead for Georgia Tech.

Q. And you personally received six thousand dollars of that Council's money, didn't you? A. Since you asked me that on deposition, I checked and that is true, exactly six thousand.

Q. Now is it not– A. Mostly for travel I mean when I went to Atlanta–

Q. Yes. A. –or to somewhere–

Q. Is it not true, sir, that the Council of Independent Gasoline Marketers is a split-off of SIGMA? A. Well, I believe all of the members of the Council are also members of SIGMA and some of them have been important influences in SIGMA, for example, Mrs. Hudson or Mrs. Vandegrift, who was here yesterday, Miss Hudson, Mrs. Vandegrift was—is a member of that Council.

Q. And is it not true, sir, that the members of the Council have been described by you as a split of the more radical group of SIGMA? A. I—I'm sure I said that, probably an extreme choice of words. It is a group which felt that they needed to act (T. 594) quickly during this period of rapid change and their plight and the procedures of the SIGMA, which was a very large organization, and which contained a large number of members who were tied in a complicated way to major interests was not able to act and so this was an effort to pull out of SIGMA and to act on certain policy matters and Congress during the period of the crisis.

Q. Now in your reference to this group as a more radical group, sir, what did you mean? A. I meant that they were more willing to look at structural change in the industry as a approach to policy.

Q. And is it not also true that you said that by the time SIGMA or the Council was formed SIGMA was no longer and I quote "an important force for political reform"? A. The reason being that—

Q. First, did you say that, sir? A. Well, if you read—I'm sure I would say it again I guess—If I didn't say it that time. The fact was that the whole decision making machinery of SIGMA by this time had become very cumbersome given the rapid change of things that were going on in Washington in the energy picture.

Q. Now, sir, do these books reflect the views of the SIGMA members and the Council members? A. Parts of them do not. In the first book one of the (T. 595) recommendations were made was that the majors—no major be permitted to buy an independent. One of the problems of our research during the period was that a way of dealing with intertype competition when it became too troublesome was to buy out that actor and there is a long record of buy-outs. Professor Allvine and I believe that that should stop; and we proposed—that is the policy recommendation; but members of SIGMA, however, who are as you point out rich businessmen many of them without apparent errors in the company didn't like the fact that this would cut off a way of liquidating their estates and so they opposed that or many of them opposed it. I'm sure there are other differences.

Q. Can you name any other viewpoint expressed in these books that do not reflect the views of the two groups that subsidized the books? A. Well, I guess I don't know how to find out what the views of the two groups are and that's—I mean I don't have a list of that, but from the deposition you read to me during my deposition they seemed to imply that at least the leadership structure of SIGMA was opposed to divestiture as a remedy so they didn't buy that idea.

Q. So far as you know, Dr. Patterson, what the views of these two groups of private brand marketers are, is there any other respect in which these books don't reflect the views (T. 596) of the groups that subsidized the publications, the books? A. I am not—I am unaware of them. There may be.

Q. As a matter of fact, doesn't the first book say that you are deeply indebted to the president of Martin Oil Company for his assistance to you in writing the book?

A. The second book is dedicated to him, sir.

Q. And he—Martin Oil Company is a private brand, independent marketer, is it not? A. One of the price setters that I'd like to identify if they had been in Maryland.

Q. Yes, sir, but they have no stations in Maryland, do they? A. As far as I know, they do not.

Q. Now, sir, can you identify in the State of Maryland any business firm that you regard as a truly independent private brand, low price competitor in the market? A. I'm having trouble on the specific Maryland dimension of that because as I say I haven't seen the price behavior in a normal situation, but I would expect Hudson, Fisca, firms like this—

(Court) What was the second one, please?

A. F I S C A, Fisca which is owned by a brother of Hudson—Mrs. Hudson. The—this type of firm, there are a few of them, not very many.

(T. 597) Q. Well now, how many Hudson stations are there in Maryland, do you know? A. I within the hour looked at that in the thing and I'm sorry I've forgotten it already.

Q. It's like three or four, isn't it? A. Or maybe five.

Q. All right and how many Fisca stations? A. And I believe that may be, again if I could look at the record, something like two or three.

Q. So we're talking about four or six stations? A. That's right. The—

Q. All right the— A. Maryland is characterized by an absence of this important type of marketer.

Q. Now except for these four or six stations, can you identify in this State of Maryland any other places that sell gasoline that fit your model of the private brand, independent price discounter? A. I mean if I could go through the list, I might be able to say what I thought

they were, but not having seen them in a normal situation, I don't think I can authoritatively say what their price behavior is in Maryland. I have seen those firms under more traditional circumstances in other markets and some of those firms if they're listed, they are (T. 598) price setters, aggressive discounters, striving to get a bigger discount for them.

Q. I'm sure that you would agree that Phil Syton and Maurice Cappolo are price setters? A. Those are the kind of firms I'm talking about.

Q. But they aren't in Maryland, are they? A. I don't see them on the list.

Q. No, sir. Now isn't it true that the extent to which the opinions you gave Mr. Woodstock are applicable to the State of Maryland would depend very largely if not wholly on the extent to which the kind of marketers you were talking about exist in the State of Maryland? A. Or might be induced to enter the State of Maryland.

Q. All right, that's true, is it not? A. If there were no actor like that who would strive to get a bigger discount and to bring the price structure down, then you could expect very high prices in the State of Maryland and it suggests the problem with competition in the State of Maryland.

Q. But is it not true, if you could give me a direct answer, sir, is it not true tht the extent to which your answers to Mr. Woodstock's questions apply to the State of Maryland is in direct proportion to the extent to which the group of people whom you call price setters in fact exist in (T. 599) Maryland? A. Well, it could be induced to exist.

Q. All right. Now you have talked previously about independents—or I'm sorry, majors who masquerade as independents. What do you mean by that, sir? A. These are the secondary brands of the true majors, Alert, Sun Oil.

Q. Now do you measure the competitive viability of a merchant by who owns the stock in the company or by his behavior in the marketplace? A. By his behavior, that's the critical test.

Q. And that's the test that counts, is it not? A. But you wouldn't deny that the behavior is the product of his ownership, would you?

Q. I– A. Or at least I would say that with reference to forecasting what the behavior might be.

Q. Let's get an answer to my question first and I'll be glad to explore your comment. Is it true that the competitive behavior is the only effective measure of competition and it is irrelevant who owns the company so far as the measure of competition is concerned? A. The primary test would be the behavior.

Q. All right, now you suggest that the behavior may be (T. 600) measured by the ownership of the company, is that the suggestion of your remarks? A. My proposal, sir, is that the structure of the market including the ownership and the association with others and all these other factors that we theorists in industrial organization typically use is an important influence on the behavior of the actors in that market and on the performance of the process.

Q. Now, sir, if in fact BP Gas and Go stations are low priced price setters, is that pro-competitive regardless of who owns BP? A. If that were true, I would say yes, sir.

Q. And do you know– A. You said price setter now, you didn't say price taker–

Q. Yes, sir, I certainly did. I certainly did; and do you know who owns BP? A. BP Oil which is owned-subsidiary of Sun Oil.

(Court) Of what, sir? A. Standard Oil of Ohio.

(Court) All right.

Q. Doesn't BP stand for British Petroleum? A. It does, sir.

Q. And doesn't British Petroleum own the BP stations (T. 601) as well as Standard Oil of Ohio? A. There's a relationship to be worked out I understand when the offshore oil comes in then it will determine whether it will buy that company.

Q. And BP or British Petroelum Corporation is one of the half dozen largest oil companies in the world, is it not? A. And a large share of it is owned by the Crown.

Q. Sir? A. And a large share of it is owned by the United Kingdom.

Q. But it is one of the– A. Yes, it is–

Q. –half dozen– A. –one of the seven biggest.

Q. It's one of the half dozen largest oil corporations in the world, is it not? A. That is right.

Q. Now, sir, you have stressed a great deal in your testimony here today intertype competition. A. Correct.

Q. And while I am – was unfamiliar with the term prior to your testimony, you consider that–what you call intertype competition to be the critical yardstick of measuring competition in the marketplace, do you not? (T. 602) A. In the gasoline business.

Q. Yes, that's what we're talking about, yes. Now I assume that the phrase intertype competition means competition between one type of business entity and another type of business entity, is that correct? A. Yes, sir.

Q. And one type of business entity is service stations operated by dealers who either lease the station or own the station and buy gasoline from a supplier and resell it under a brand name, that's of one type, is it not? A. Yes, sir.

Q. And another type would be a company operated service station selling under a brand name, is that not correct? A. Not in my classification. It's a type – I mean

it's a different type of station but I try to characterize the critical types in trying to understand the competitive process in the gasoline industry as those that tend to use the major brand style and those nonintegrated firms that tend to emphasize price and less or no service; and mass merchandising.

Q. Well, is it your testimony, sir, that there is no relevance whatever and no difference whatever in the type as you use the phrase between company operated Shell stations and dealer operated Shell stations? A. On—there's a difference and there's an impact but (T. 603) on what? I'm sorry, but I don't understand what—you said there's no relevance or meaning with respect to what?

Q. Is there a relevance or a meaning as to intertype competition between company operated stations and dealer operated stations? A. Yes, there will be a—if a company operated station by a large major oil firm would be a way of dealing with intertype competition which would be much more damaging intertype competition than would dealing—than competing through dealers.

Q. Now, sir, to the extent that branded major company dealers for whatever reason are reluctant to engage in price competition with the price discounters, would it not be procompetitive for company owned and operated stations of that brand such as Shell, for example, to engage in price competition with the price discounters? A. Competition to where somebody has to cut the price and someone else has to respond so in a sense that the response would come as a result of the direct operation, I would say yes, sir.

Q. So that if the Shell Oil Company were tomorrow to open twenty service stations in Maryland which they gave no facilty—had no facilities whatever for repair work or didn't sell tires, just a self-service gasoline only at a lower

price than Shell dealers are charging in Maryland, that (T. 604) would be pro-competitive, wouldn't it? A. But if you—

Q. Can you answer my— A. If I have to stop there, and I can't go any further with the processes likely to unfold, so far it would be pro-competitive.

Q. All right, now what process do you say is likely to unfold? A. If that become a technique for focusing the price cuts on those stations close by, the aggressive intertype competitor, the private brand marketer, that is likely to dissuade him from being so aggressive and the net result of this process will be to harm competition.

Q. Well, are you aware of the fact, Dr. Patterson, that the Shell Oil Company has in fact built several hundred gasoline only, self service only, company operated, employee operated service stations selling gasoline at low prices with salaried employees? A. Yes, sir.

Q. And do you consider that a pre-competitive set in the sale of gasoline? A. It's pro-competitive in the sense that it responds to a legitimate demand for a new—makes a new retail offer. It could, however, be anti-competitive in a sense that it (T. 605) could be a way of focusing the financial power of Shell Oil on the price cutter.

Q. Well, are you saying, sir, that the law should protect or shield the price cutter from competition from somebody else? A. No, sir, I'm not saying that.

Q. And you don't believe that the Maryland Legislature would be acting in the public interest if they sought to shield any one group of marketers from competition from another group, do you? A. I don't want to rule out the—in fact it seems to me the whole purpose of governmental intervention in the preservation of the maintenance of competition is to stop the process which might carry to its conclusion, produce less competition so I'm not against shielding certain classes of actors in the

system in order to preserve the process of competition as a regulator of business behavior.

Q. Do you mean by that that you would protect these people just for the sake of protecting a group that you favor or do you mean that you would protect them only against unfair competition? A. There is an element of predatory actors here that is important to sheild actors in the system from.

Q. Well, putting aside predatory conduct which is (T. 606) already illegal under many statutes before this statute was passed, is there anything anti-competitive in major oil companies opening company operated service stations selling gasoline at lower prices to compete with the price discounter you've been talking about? A. Only to the extent that if those stations are used to check the tendency of the price setter, the aggressive price setter to try to strive for lower price of gasoline.

Q. And absent that conduct which I assume you would call predatory, wouldn't you? A. Well, that's a legal–technical problem. I see it as predatory, whether it would be predatory under the law–

Q. But absent that conduct you believe it would be procompetitive to have the situation I've been discussing, do you not? A. In the limited dimension that you've talked about, pro-competitive.

Q. Yes, sir. Now one of the things you've talked about this morning was the margin. I take it you were talking about the retail margin? A. And the jobber margin.

Q. Yes, sir and what was the retailer or dealer margin prior to the 1973 energy crisis? A. The normal margin was something in the neighborhood (T. 607) of seven cents for the retailer.

Q. And under the FEA price ceilings what was the dealer margin? A. As I recall it was permitted to go on up about eleven cents.

Q. Did you not testify in your deposition that the FEA was coerced or compelled to raise that dealer margin by what you classify unarmed rebellion of the retail dealers? A. I–that's probably true but I don't remember the exact language.

Q. And the price rise–the rise in dealer margins came as a result of dealer threats to the Federal Government to close their stations unless their margins were increased, isn't that true? A. Dealers or–

(Mr. Woodstock) Objection, Your Honor. I don't–regardless of–if he's saying that's what Dr. Patterson's comments were, well, fine. If he's asking for–as a statement of fact as to why FEA did anything, I think it should be stricken from the record. Dr. Patterson can't comment on as to why FEA did what it did, only as to his opinion.

(Court) Well, as I understand the question it focused on whether or not Dr. Patterson was of that mind in writing the book, isn't that–

(T. 608) A. Or making the statement at the deposition.

Q. Yes and that is your opinion, is it not, sir? A. Yes, it was strictly, or not strictly, but heavily influenced by strong dealer pressure brought to bear.

Q. And is it not true, sir, that the increase in dealer margin from seven cents a gallon to eleven cents a gallon came in the face of reduced dealers costs, dealer operating costs? A. Yes, Sir, dealers were running shorter hours with less people and not running their lights as long and that's true.

Q. And, therefore, the dealers got an increased margin when they were having lower costs? A. Yes, true.

Q. And this is certainly contrary to all the rules of economics of what prevails in a competitive market, isn't it? A. Well, it was not a competitive market obviously.

Q. Yes, but I say that's contrary to the rules– A. Yes.

Q. —of the competitive market, is it not? A. Yes.

Q. And, therefore, would it not be pro-competitive, sir, for a major oil company to operate company stations at selling gasoline at what you would agree as a reasonable (T. 609) margin whatever that might be? A. With respect to that particular part of it, it would be pro-competitive.

Q. Yes. A. There would be other dimensions to it, however.

Q. There are always other dimensions to everything, aren't there? But it would increase competition, would it not, to— A. It would lower the margin if the oil companies came in with direct operated stations and ran them at five cent markup instead of eight cents.

Q. Or even seven cents? A. Or even seven.

Q. And that would be to the benefit of the public, would it not? A. It sure would.

Q. Now, sir, the service station dealers in Maryland, the retail service station dealers who are largely major brand service station dealers vigorously support this legislation. As a marketing expert, what in your opinion is the economic reason that they support this legislation? A. I think they probably see a trend in the direction of direct operations if legislation like this is not enacted and the result will be a decline in the opportunity for (T. 610) dealerships and, therefore, a decrease in the population of dealers and probably a relegation to dealers of the less profitable stations and a going back into the owner of the oil company of those stations which have high volume profit prospects.

Q. And do you also believe, sir, that they properly see competition for the amount of the margin they're going to be able to charge the public? A. No question about that.

Q. No question about it, is there? A. They see this is a

way that their supplier will probably try to raise the margin that they charge.

Q. And it's in the public interest to reduce that margin, isn't it? A. It is.

Q. And one of the effects of this legislation would be, would it not, to protect the branded dealers charging an eleven cent margin against competition from company operated stations of a branded supplier? A. Of an integrated producer-refiner, yes, it would.

Q. And that's not in the public interest, is it? A. That part of the law is not.

Q. Now, sir, you testified this morning that even after the repeal of the depletion allowance the production (T. 611) of crude oil was the profitable end of the oil business. What's the basis for that opinion? A. We've had a dramatic increase in the price of oil and the same time we've lost a tax shelter from the crude oil.

Q. Do you have any knowledge, sir, of what the current cost of finding oil is? A. I have seen different figures. It obviously varies from field to field.

Q. Do you know whether the current costs of finding oil are higher than the present prices of oil? Crude oil? A. Give me—for example are you talking about the amount of float?

Q. I'm— A. I mean if you're—I mean it depends upon the cost of finding oil depends upon the amount of oil you can draw out of a reservoir and—

Q. Excuse me, Mr. Patterson, I'm not asking you what I think, I'm asking you what you testified to. You testified that the crude oil end of the business was still the most profitable in the business; and I'm asking you do you know whether the present cost of finding oil is more than the present cost of crude oil? A. I don't know how to answer that in that strain.

Q. Can you answer it, sir? (T. 612) A. I don't know that anyone can.

Q. Well, can you answer it? A. I cannot.

Q. All right. Now is it your opinion, sir, that the role of government in maintaining competition should shield any group of competitor from any other non-predatory competition? A. If you define non-predatory as fair competition, I would say not.

Q. And, therefore, to the extent that Sections B and C of this statute prevent competition between supplier operated service stations and major brand dealers, is the statute not performing the proper government role? A. But that has to be taken on that, I would agree with that, but I—you should look at the other sections as well.

Q. Can only ask one question at a time. A. Right.

Q. Is it also true, sir, that to the extent that the statute prohibits supplier company operated service stations from competing in fair competition with the discount service stations, the statute is not performing a proper government role in your opinion? A. Applying to that example, I would say yes.

Q. And is it true that your testimony and response (T. 613) to questions by Mr. Woodstock that it was the role of government to maintain the vigor of the competitive process would include competition, fair competition between major company salary operated stations and any other segment of the economy, the gasoline economy? A. I guess I lost the question part way through. It seems to me—

(Court) I think I did, too. Would you mind—

(Mr. Simon) Yes, sir.

(Court) —asking that over, sir.

Q. Is it your testimony, sir, that the proper role of government in preserving the vigor of the competitive process to which you testified on direct examination is

not being performed when the government prohibits fair competition between salary operated company stations of a supplier and any other segment of the gasoline economy? A. Given that limited statement, I would say yes.

Q. Thank you. Now in response to a question by Mr. Woodstock, you said that you were troubled by the fact that the statute prohibited integrated discounters from maintaining company operated stations but that you find that they are price takers not price setters. Are my notes accurate as to your testimony? (T. 614) A. They typically are price takers in my experience outside of Maryland where I—

Q. That's the question I was going to ask you. Can you name for me any integrated discounter in Maryland who is a price taker and not a price setter? A. No. I said, sir, that I have not been able to see how Maryland works because it doesn't work right in the current scene. I haven't been here before.

Q. Then your answer to Mr. Woodstock's question which I have just summarized does—has no application to Maryland, does it? A. I would hope that general knowledge would have some implication as far as specific cases, but if it would be subject to this confirmation, that some evidence came up in Maryland and showed Maryland was unlike the rest of the United States.

Q. The fact is you have no knowledge of— A. I have no specific knowledge of Maryland.

Q. And you cannot tell me, can you, sir, whether any particular company that I would name that is an integrated discounter is a price taker or a price setter? A. No, sir.

Q. Now you said that the only discounters that you would protect or shield are those who reduce their prices (T. 615) because they think they can get away with it.

What did you mean by that? A. That they—no one would try to cut price unless he thinks that he can maintain the increased volume that he gets from it. If the price cuts will be immediately countered by his competitors to the full extent, then it would be typically a self-defeating move. So if the actor thinks that the move is not self-defeating, that he will be able, if you will, to get away with the making the price cut and not being met head on immediately, he would have more motivation to make the price cut than would be the case if he knew that as soon he cut price, his competitors would meet him exactly and neither one would change the market sharing.

Q. And that's true, sir, no matter who the marketer is, is it not? A. That would be true.

Q. Doesn't make any difference whether it's a major oil company or the independent with one station? That's equally true, isn't it? A. May I make a point.

Q. Yes, sir. Would you answer my question though and then make your point. A. That's true except that the circumstances the actor finds himself in heavily influences the likelihood that he (T. 616) would get away with it.

Q. Now is it not true as a matter of economics or at least textbook economics that one can chart on a graph what your volume will be at each different price level and as your price goes down, your volume should go up. Now that's correct, isn't it? A. That would be true in certain likely situations but in the autotypolistic market structure which is typical of a retail situation that's not so easy because what impact the price cut—the price cutter gets will be the function of the response that his competitor makes and in a interdependent market, a market characterized by only a few sellers which is

typical of retail corner is not that easy to try to forecast what the response will be.

Q. Well, I'd like to be a little more specific, Dr. Patterson. There are Shell stations that sell two hundred thousand gallons of gasoline a month. A. Yes, sir.

Q. There are other Shell stations that sell twenty-five or thirty thousand gallons of gasoline. A. (Unintelligible, talked too fast.)

Q. And you would assume, would you not, that the station selling two hundred thousand gallons a month is charging a laower price, would you not? (T. 617) A. Well, that's—it could be due to many things, but it certainly would have to be competitive on price.

Q. Yes and the point I'm trying to get at is is it not true that net profit is a combination of the factor of price and volume? A. It sure is.

Q. And your net profit is a mixture of selling at the lowest price to get the highest volume of maximize ultimate net profit, is that not true? A. That's—one would have to look at the relationship between the major cost change as a result of the volume increase, behavior of revenues, but there would be a relationship which would move in that direction, economic devastation.

Q. And isn't that economic fact of the gasoline business equally true of any marketer no matter who he is? A. That would be true except the likelihood of being able to retain the volume change as a result of using price cuts. If the Shell station across from a Texaco station cut its price, the Texaco station by virtue of being a common competitor, one that's a similar type would have to cut its price in order to not lose its business and if both of them cut their price, it's unlikely that you would begin to draw business from down the street, but you wouldn't get (T. 618) the same increase in volume that you would get if you weren't compelled to meet each others's price.

Q. Isn't the converse true, Dr. Patterson, if the Shell and the Texaco stations on those—that corner were two or three cents a gallon lower in price than the rest of the town, wouldn't they both gain very substantially in volume? A. There would be, of course, limitations due to ignorance and inconveniences and so on, but if they were the low price in the town, they would gain business, there's no question about that.

Q. Yes, sir and if they gained enough business, they could make more money at the lower price, than they had previously made at the higher price, couldn't they? A. But as soon as others began to lose business to them, then the price would go down to check that.

Q. And that's equally true of the price discounter whom you call a price setter as it is for the Shell company operated stations, is it not? A. Yes, sir.

Q. Now is your view of the model of competition in your view of the appropriate model for competition that one should look at innovations, progress and consumer convenience? A. Certainly.

(T. 619) Q. Is it not in the public interest to encourage the Shell Oil Company, for example, to open a wholly self-service station with no employees at all where you dispense the gasoline out of the tank yourself and you put either a credit card or dollar bills into a machine which then automatically gives you the amount of gasoline you put the money in the machine for? A. If there were no other negative concepts of that, that would be excellent.

Q. That would be very good, would it not? A. I'm not sure that I want it but I would like to have that option open for the people who would want it.

Q. And is it not true that this statute would inhibit such innovation? A. It would to some extent but it would also enhance certain other innovators.

Q. Well, of course, I suppose that everything in life from marijuana to whatever you can think of that's best has both plusses and minuses, doesn't it? A. There is a need to look at the cross benefit analysis of this sort of thing, yes, sir.

Q. Have you made any cross benefit analysis of the pros and the cons of this statute as it applies to the gasoline industry in Maryland? (T. 620) A. In a sense that's what I have been doing in this case, not a big one, but my point in trying to follow a conclusion about the impacts of this law on the consumer welfare of the motorist in the State of Maryland is to look at what it's going to cost them in the way of the kinds of costs we're talking about and the benefits they will get from enhanced intertype competition.

Q. Now I—

(Court) Excuse me a minute, Mr. Simon, but we have run a half an hour past the usual time unless you have something that you really want to finish, sir.

(Mr. Simon) No, sir.

(Court) Suppose we recess until two o'clock. Professor Patterson, please do not discuss your testimony with anyone during the recess.

(Lunch Recess)

(Court) Professor, you want to resume the stand please?

(Mr. Simon) I just have a few more questions, Your Honor—

(Court) All right, sir.

(Mr. Simon) —and I'll be finished.

Q. Dr. Patterson, have you ever made a cost benefit analysis of this statute in terms of its dollar effect on (T. 621) Maryland motorists? A. No, sir.

Q. Do you know of anybody who has? A. No, sir.

Q. At page 209 of your book, COMPETITION

LIMITED, you say and I quote "The purchases of price marketers by some of the major oil companies such as Continental and Tenneco and their continued operation as aggressive secondary price brands does not yet seem to have weakened intertype competition." Are you familiar with that statement? A. It's been a while, but I agree that it said that, sure.

Q. Now the purchase of a price marketer by Continental Oil Company was its purchase of Kayo, was it not? A. Yes, sir.

Q. Has any—have you become acquainted with any facts o: has any knowledge come to you since this book was written that would change your statement that Continental's purchase of Kayo has not weakened intertype competition? A. One fact.

Q. What is that, sir? A. The move forward on a broad scale into direct operations has resulted in a much more balanced integration of the principal suppliers of gasoline and as a result has had an (T. 622) impact on the supply of gasoline available to the nonintegrated marketers.

Q. That has no relationship to Continental's acts with respect to Kayo, does it? A. That's part of a basic trend of which the Continental is one component of it.

Q. Has Continental changed its performance, competitive performance in the Kayo operations since the time you wrote this book? A. Not that I'm aware of.

Q. Now, sir, in your direct examination this morning you said that as a result of this statute there were price makers, the independent or private brand discount variety who would come into this market as a result of this statute. Can you name any such price marketer whom you have any reason to believe will come into Maryland if the validity of this statute is sustained? A. I do not know any specific price marketer, only that remark was intended to discuss a class of actors.

Q. But you have no knowledge of any— A. No, sir.

Q. —body who plans to come into Maryland if the statute is sustained? A. No, sir.

(T. 623) Q. Now, sir, in response to a question on direct examination you testified that the role of government intervention should be only to maintain the "rules of the game" and I ask you if you have any knowledge of any fact that any of the Plaintiffs in these cases has not conducted itself in the State of Maryland according to the "rules of the game?" A. No, sir, I do not.

Q. You will recall that on—under date of July 1, 1975, you filed an addifavit or you executed an affidavit which was filed in this case. A. Yes, sir.

Q. And in that affidavit, on page four describing a chapter of your second book you say that the result of changing factors in the industry has resulted in certain changes in the marketing practices of gasoline; and then you say and I quote "Among the documented moves are the following: one, direct entry into private brand discount marketing through the use of secondary brands." Do you find that a good or a bad thing? A. It is both.

Q. Well, at your deposition in this case at page 304 I asked you if you were asked these questions and you made these answers. "Q. Among the documented moves are the following one, direct entry into private brand discount marketing through (T. 624) the use of secondary brands. Do you find that—Answer Yes, sir. Question Is that a good or a bad thing? Answer I find that good." Did you make those answers to those questions at your deposition? A. I'm sure I did.

Q. And has anything occurred since the deposition was taken two months ago to change your opinion? A. Well, I'm not sure the deposition, I don't know in what

context that was exactly said, but I—as I just indicated I think there were positive features and there are negative features.

Q. But at the deposition you said only that you find it good; and my question is has anything come to your attention since then to change that opinion. A. I don't think that answer in the deposition was a true statement of what I believe. I mean I apparently misunderstood a question or misspoke myself at that point.

Q. I see. The second factor here that you say is resulted from these changes is withdrawal from unprofitable marketing areas. Do you find that a good or a bad thing? A. Basically I find that a good thing.

Q. And the third thing you said was as a result of the changes in the industry was the accelerated closing of low volume stations. Do you find that a good or a bad thing? (T. 625) A. I find that a good thing.

Q. I'd like to show you the transcript and ask you if you misunderstood me or the transcript indicates that your answer was taken out of context as to the answer you gave about the entry of—into private brand discounting through the use of secondary brands. Have I been unfair to you in taking that sen—that answer out of context? A. No, that's – that's in context. My answer I assume is intended to view that specific point by itself namely that response to a revealed market segment by actors in a system is good. I agree with that.

Q. Just one last question. Do you know of any discounter or price competitor or price maker as you've described them doing business in the State of Maryland at this time who is not able to obtain all the gasoline he requires to conduct his business? A. No, there, I believe, at the current moment is a surplus of gasoline.

(Mr. Simon) Thank you. I have no further questions.

(Mr. Drogula) May I proceed?

(Court) Yes, sir.

CROSS EXAMINATION

By Mr. Drogula:

Q. Professor Patterson, my name is Fred Drogula on (T. 626) behalf of Ashland Oil in this litigation. You testified on direct examination that you have been troubled over the application of Chapter 854 to companies like Ashland who you classify as refiner-marketers, is that correct? A. Yes, sir.

Q. Does that reflect the fact that at your deposition approximately sixty days ago you did not have an opinion at that time as to whether this law made good economic sense as to Ashland? A. I reserved the right at that time, yes, sir.

Q. In fact you reserved the right to testify in this litigation that the statute does not make economic sense to Ashland, did you not? A. Yes, sir.

Q. Since that time in the past sixty days, what if any investigation or study have you conducted to assist you in forming the opinion you expressed today? A. No study in the sense that I went out and got data, reflection on the scenario of consequences.

Q. In other words you just thought about it? A. I thought about it.

Q. All right, would you please describe to the court your understanding of exactly what a refiner-marketer is? A. My definition will not conform to Mr. Coleman's. (T. 627) I tend to classify the minor majors as refiner-marketers, those that are not heavily self-sufficient in crude, those that are primarily buyers of crude and then refiners and marketers and wholesalers of gasoline.

Q. Are you aware then that Ashland Oil is substantially crude deficient? A. Yes, sir.

Q. Are you aware that it markets a substantial portion of its refined petroleum products to independent gasoline marketers? A. That's the feature of the dilemma that you

posed for me in July or in August that gave me pause. It's a matter of record that the independent refiner-marketers are a major source of unbranded gasoline to the price marketer, the nonintegrated price marketer who is the price maker in the marketplace.

Q. And that is extremely pro-competitive, is it not? A. That is right, sir.

Q. Do you strongly support the role of independent refiners like Ashland who exist in the marketplace to supply marketers? A. As a source of supply of unbranded gasoline, it's essential.

Q. Turning your attention back to the onset of the (T. 628) so-called fuels crisis in 1973, 1974, did Ashland and other crude deficient independent refiners experience economic injury or handicaps or hardships? A. Most certainly, the book HIGHWAY ROBBERY in fact has considerable correspondence with the president of Ashland, with the Office of Emergency Preparedness and other government agencies about this.

Q. Would you describe for the court very briefly what those economic hardships were that independent refiners experience? A. They were substantially cut back in the availability of crude which increased—decreased their output and increased their operating costs.

Q. And what was the result of that downstream to their independent marketers' customers? A. It dried up the unbranded gasoline available to those customers.

Q. Are you aware that the Federal Government intervened at that particular time to enact legislation to assist independent refiners and independent marketers? A. I was active in Congress at that time to encourage that, yes, sir, I'm well aware of that.

Q. You supported federal legislation? A. I did, sir.

(T. 629) Q. And what was the effect of that federal legislation very briefly upon independent refiners? A. It

tended to restore to them a share of the crude oil and to—also make through the entitlements program to attempt to equalize the cost of crude oil to them in order to reduce the impact of them buying the very high cost crude and their major competitors having a larger supply of price controlled crude.

Q. Would you then agree that independent refiners as well as the independent marketers you've testified about were among the victims of the so-called fuels crisis? A. That is right.

Q. Were you present in the court room yesterday during the testimony of Mr. Luellen of Ashland Oil? A. Yes, I was, yes, sir.

Q. Did you hear him say that in his opinion Ashland Oil must have company operated marketing outlets in order to protect its refinery operations? A. I did.

Q. Do you have any basis to disagree with that statement? A. There are and I don't disagree with his statement. That may his judgment about what is essential to Ashland. There are obviously examples of independent refiners who are not marketers who prosper.

(T. 630) Q. Independent refiners are, are they not, subject to substantial fluctuations both in supply and price? A. There is no question that in attempt to gain control of markets and to control crude is important to the stability and possibility of those firms, yes, sir. They are subject to variability and as a consequence are disadvantaged relative to the majors in that sense.

Q. So that in periods when their crude costs are high and their product costs are correspondingly high, would you agree that these company owned, retail, private brand outlets represent a form of a safety valve for their refined products? A. You said product prices are high?

Q. Yes. A. So that everything in the system is running at high level, high margins all the way through?

Q. Yes. A. Safety valve in the sense that if something changes later they're building a reserve to protect against that or something, yes, sir.

Q. During the period 1973-1974 did not customers of independent refiners such as Hudson and (unintelligible) move away from those suppliers in some instances to refiners having lower wholesale or tank wagon price? A. Yes, sir.

(T. 631) Q. And during those periods of time was it not imprtant to the independent refiners to have their own outlets to fall back on? A. I'm sure it was important to the independent at that point.

Q. In your books, Professor Patterson, you referred to the operating efficiencies which exist in connection between refining and marketing operation. Do you agree as of today that for a refiner-marketer there are pro-competitive marketing advantages that are experienced? A. There are efficiencies, whether those are pro-competitive depends upon how they're used, are they used to lower price, are they used to be more aggressive in the marketplace or are they merely taken as profits.

Q. Let's break it up then. First, what are the efficiencies? A. Well, the one you just mentioned is an important one, the stability of the relationship, a controlled market gives a certain stability in operations which is useful, as you take some of the uncertainty out of the planning, the logistics of supply in terms of delivery and economic quantities, these things, large sized deliveries, proper scheduling of the production, all of these things result in cost savings.

Q. Now your testimony today is that these efficiencies (T. 632) which offer the consumer a product at a lower price would not be pro-competitive? A. They may not offer their competitor the much lower price. In other words one has to look at how those efficiencies are used.

They can be used to merely to increase the profit of the firm rather than to be passed on at lower prices. There is a pool of resources that were saved by being more efficient that can be used in a number of ways.

Q. Have you in any way changed the opinions expressed in your book that forever what one might say about divorcement of crude production that there is no compelling reason to divest marketing from retailers? A. I have changed that as a result of th experiences of the last year and in particular the consequences of the governmental programs and response to the changed structure of the companies so that now it seems to me that there is a need to restrict the direct operation by vertical integrated companies of their stations because—for two reasons, one it creates a power to discipline by using specific price reductions in only those stations in face to face competition with the price marketers and the other thinking is that as more of the gasoline of the system is directed toward controlled, favored integrated outlets less of it will be made available in the future to price marketers. So it's a supply and a price (T. 633) behavior matter.

Q. These are not the views you expressed in your books as recently as 1974, are they? A. No, sir, those were based on an understanding of the structure of the industry that was in flux and was not very clear at the point of—when the book was written in late '73 and '74.

Q. I believe you indicated your agreement today with the statement Mr. Luellen made yesterday to the effect that independent refiners don't have the resources to engage in branded marketing in distant markets, is that correct? A. Yes, I believe that's true.

Q. ,In other words they market their branded outlets under the Ashland flag in those areas which are close to their refinery? A. Probably Marathon becomes the upper

limit of a firm of this sort that can go the branded route. I think firms beyond that face serious problems.

Q. So that in your opinion Ashland could not successfully engage in branded marketing in the State of Maryland? A. Flying Ashland brand with full service stations, I think that would not be a sensible policy.

Q. Mr. Luellen again said yesterday that Ashland would withdraw from the Maryland market if it were forced to abandon (T. 634) its company operated stations. Do you have any basis for disagreeing with Mr. Luellen's testimony? A. I'm sure he knows more about Ashland's policy than I do.

Q. So if he were to tell you that it would not be economically feasible for Ashland to operate those stations through dealers that's using margins of seven to eleven cents, you would have no basis to disagree with him? A. If that is the only way to deal with the situation, I would agree with it. I'm not sure that is the only response to the law.

Q. You heard Mary Hudson testify here yesterday, did you not? A. Yes, sir.

Q. Did you hear her say that she operates through company operated stations because she needs to control the price of the product sold? Did you hear that? A. Yes, sir.

Q. Did you also hear her say she needs to control the hours of operations and the cleanliness maintained at the various stations? A. But the Hudson operation is a nonintegrated operation.

Q. Well, I'm coming to that but did you hear her make those statements? (T. 635) A. Yes, sir.

Q. And do you agree with them? A. I believe that's absolutely the crux of the success of the discount marketer.

Q. Do you also believe that Ashland Oil as a crude

deficient, independent refiner that it is not logially entitled to use the same marketing strategy? A. Not if that harms the process of competition.

Q. Now please explain to me, sir, how does that harm the process of competition keeping in mind your testimony that Ashland is a crude deficient, independent refiner? A. So that your point is can I agree with you that there will not be the price cutting, price support behavior that wouldn't come so it wouldn't come through the supply cycle.

Q. Wait a minute. Excuse me. All right. A. Yes, sir.

Q. In other words you are agreeing with me that an independent oil company such as Ashland does not have the capacity to engage in unfair pricing practices in the market, it that right? A. Let me use the word focused price reductions in the market, that's right, I agree with you. If they do not have the deep pocket of resources necessary to do that that comes from substantial crude supply.

(T. 636) Q. Now you've indicated that your concern as to retailer marketer operations is essentially in your words because they're passive rather than aggressive price setters. Now Mr. Luellen again testified yesterday and I'm sure you heard him that he considered Ashland an aggressive price setter. Do you have any factual basis for disagreeing with that testimony? A. My only knowledge is based on behavior of Ashland in other markets and in my opinion from what I'm able to observe they tend to meet the price, they don't tend to set it. They are quick to come to the price that is being set.

Q. Ashland has seventeen stations operating in Maryland. Do you have any facts— A. I have no specific knowledge of the Maryland behavior.

Q. Well, if it should be the case that Ashland is an

aggressive price setter in Maryland, then is there any reason in your lexigon to deny Ashland the right to operate company owned stations in Maryland assuming, I'm premising the fact for you that they are an aggressive price setter. A. Would make it a very marginal argument on that opinion.

Q. In other words your support for excluding them would be a very marginal argument? A. That's right, sir.

Q. In other words you would have a very difficult time (T. 637) supporting your thesis that Ashland should be removed from the Maryland market if in fact they are an aggressive price setter? A. That is right.

Q. What is so bad about being a price follower that in effect meets the lowest gasoline price anywhere in the State? What is so onerous or so offensive about that conduct that justifies divorcement legislation which pushes a pro-competitive factor out of the Maryland market? A. Oh, obviously the meeting of a price is not bad. To lose the whole law in order to protect this one kind of situation strikes me as being bad because the law will preserve the right of this price cutter to play with price and it will tend to maintain the supply of gasoline available to him.

Q. Professor Patterson, I'm talking to you about maintaining the whole law. I'm asking you as a professor of economics what is so offensive and onerous about meeting the lowest gasoline price posted anywhere in Maryland that would justify excluding a competitor from the Maryland market? A. In that case I would have to say that would be one of the costs of the legislation. It is a cost benefit analysis ultimately that each piece of legislation is going to have some negative consequences and it's going to have some positive; and I would say that that would have to fall on the negative (T. 638) side of the ledger if in fact it was as you've characterized it.

Q. If you were charged with the assignment of drafting legislation such as we're faced with here today and had the authority to cast it as you choose, would you not exclude independent–

(Mr. Woodstock) Objection, Your Honor.

Q. –refiners from the market?

(Mr. Woodstock) I don't believe the witness has been qualified as legislative draftsman.

(Court) No, he's being asked as an economist as I understand it.

(Mr. Drogula) That's correct, Your Honor.

Q. Do you understand the question? A. I understand the question. I wouldn't have drafted the law as it is drafted now.

Q. You would have excluded Ashland and other independent refiners, is that right? A. Well, I would have tried to define it in a different way.

Q. All right, you would have defined it in such a way that a retailer-refiner who is behaving in a pro-competitive manner in the industry could remain in the state and operate its stations, is that a fair statement? A. Well, you've created a hypothetical situation and (T. 639) if you, you know, accepting the premises of that hypothetical situation, I'd have to go with you; but I think it would be very awkward again to figure out how to define operationally this question of being in the crafts of price aggressive versus price taking from the standpoint of administration of the statute. You might have to go other ways to do that.

Q. Are you familiar with the piece of legislation that has passed the United States Senate and presently is pending in the House– A. That's 323?

Q. That is correct which would also limit the ability of certain stations to expand company operated opera-

tions? A. I have looked at a draft of that. I'm not—unfortunately I haven't looked at it lately and so—

Q. Well are you aware of the fact that as drafted that legislation contains the specific exclusion for independent-refiners? A. I'm sorry I do not remember that, but I would accept that as fact, certainly.

Q. Well, you don't have—I don't ask— A. Oh.

Q. —you to accept it. Now Mary Hudson testified yesterday that she was not in favor of the legislation because she wants to build a refinery. Do you recall that testimony? (T. 640) A. Yes, sir.

Q. And she wants to build a refinery, I believe she said, because of her experiences during the energy crisis which she had a lack of supply. Do you recall her saying that? A. I recall her saying that.

Q. You would consider that to be a rational and sensible decision for a marketer like Mary Hudson to want to build a refinery? A. It depends on whether she sees the future without this legislation and we're really talking only about Maryland, not on a Federal level, but if there is no change in the United States with respect to these forces which are tending to dampen intertype competition, I think she's sensible to go that way.

Q. Well, you certainly couldn't criticize her, could you, for wanting to assure her source of supply by building a refinery? A. No, though I think if changes are made, it would be an imprudent direction and that company has no experience in this scenario; and I think they'll have trouble.

Q. Do you consider her decision to build a refinery if in fact she carries it out and to therefore expand the United States refining capacity and to make more supplies available, is that a pro-competitive development? A. Yes, sir.

(T. 641) Q. Now let's assume, if I may, that Miss

Hudson has succeeded in building her refinery and it is operational or as they say in the industry onstream, is she not then precisely the same kind of company as Coastal States and Commonwealth and Ashland in the sense that she is a refiner-marketer? A. She would be. I don't know about the Coastal States marketing. Do they retail?

Q. Yes, they do. In other words she's crude deficient and the three companies I've mentioned are crude deficient. A. Yes, sir.

Q. They all have refineries, is that correct? A. Yes, sir.

Q. And they all engage in marketing assuming as I've said that Coastal States does also, if you believe it's pro-competitive for Miss Hudson to build her refinery and that she should be permitted to operate it, do you think that this law has any economic justification if it would then require her immediately to sell her company operated stations? A. Well, again it's going to have complex effects. It's going to—if this were widespread instead of involving only five stations, it might dampen her enthusiasm to become a refiner. I assume with only five stations, it will not.

Q. Mr. Patterson? A. Yes, sir.

(T. 642) Q. In your opinion as an expert economist, do you believe that a law that would require Mary Hudson upon completion of her refinery immediately to divest herself of her company owned stations makes sound economic sense? A. The law does not require her to do that. It only requires her to not operate them with employees.

Q. In your opinion do you think that a law that would require her to seek—to sell gasoline directly in the State of Maryland upon construction of her refinery is consistent with sound economic principles? A. Taken in that narrow framework, I would say no.

Q. You would say what? A. Say no. Given that specific, limited set of consequences, I would say it is not pro-competitive, but there are other consequences of this law which are pro-competitive and when taken in balance, it seems to be the balance is in favor of competition even though it restricts the operation of the five Hudson stations in the state.

Q. If your opinion is that Mary Hudson should be permitted to operate her company stations in conjunction with her refinery, on what basis do you justify denying Ashland, Commonwealth and Coastal States the same right? A. Well, I'm not going to permit her—I wouldn't make an exception for her. I'm saying that the fact that she would (T. 643) have to divest, that is not operate with employee stations, would be on that law unless someone else took that over, but there will be positive dimensions to this law which will promote competition.

Q. Can you think of any economic reason if you were to consider Miss Hudson's situation in a vacuum by itself which would support Chapter 854 of the Laws of Maryland? A. If I'm only looking at the consequence of the law on Mary Hudson and her behavior, I would say that that essentially is negative. It does not increase competition.

Q. And it's negative as it applies to Ashland, too, does it not? A. Taken only with respect to Ashland and their operations in the State of Maryland.

Q. And it's negative as to Commonwealth, is it not? A. That's right.

Q. And it's negative as to other crude deficient independent refiners similarly situated to those companies? A. I—once you begin to put them altogether now, you begin to deal—I think the critical may have changed it slightly because now we're talking about a trend toward balanced integration which may mean that the

availability of product would be less. Mrs. Hudson coming in is a net gain in refining capacity. That is going to—she's not going to be (T. 644) able to sell all of her product to her stations, her directly operated stations, therefore, that's an improvement in the competitive situation but now if you permit all of the independent or nonintegrated crude deficient refiner-marketers to continue to grow in the direct marketing sense, it's going to be growth as the expense of gasoline available to the price marketers and we're talking about it over a period of time and on a broad scale, that is going to harm competition.

Q. Do you have any evidence to back that upon or is that your theory as an economist? A. That's a theory about how this process will unfold.

Q. I thought you said a moment ago that the independent refiners, Professor Patterson, were pro-competitive. A. They have been and they are but it's because of their—the fact that an Ashland according to the testimony yesterday now sells sixty percent of its output to the unbranded market.

Q. Did you hear Mr. Luellen say yesterday that Ashland is heavily inclined in fact that it must continue to sell to independent marketers? A. But he also said that he would prefer to go the other way.

Q. Did you hear him say or did you not hear him say that Ashland needed to maintain a balance and that in fact (T. 645) they have maintained that balance? A. I agree that's true that they have sloughed the variability off onto the unbranded marketer.

Q. And is it correct that there are ample gasoline supplies available today? A. To this day, I mean, there were not earlier this year.

(Mr. Drogula) I have no more—further questions, Your Honor.

(Mr. Reid) I have one question I'd like to ask.

CROSS EXAMINATION

By Mr. Reid:

Q. Dr. Patterson, how do you reconcile your answer to Mr. Drogula's question relating to a number of independent refiner-marketers with the statement in your book, COMPETITION LIMITED, "Vertical integration between refining and marketing without the market buyer which exists in the crude oil production level poses no serious anti-competitive consequences?" A. Because I think things have changed since that book was written. I mean that as the structure of the gasoline industry and prior to 1972 was one of surplusses of product and many of the Mary Hudsons were buying gasoline at marginal costs which were substantially less than the average cost of producing gasoline. With the change in that industry the whole question of the availability of supply now becomes much larger. (T. 646) It enters into the competitive effectiveness of these types of actors in the system; and that's happened since the shortage of—when we went to a hundred percent MER and in the spring of '72 and since then the whole economics of that industry changed, that is of the crude supply refining sector of the industry; and that changes the relationship then of these type of actors through the availability of supply to the price marketers.

* * * * * *

(T. 647) (Court) Professor, there's one statement you made that seems to puzzle me somewhat. Now we were talking about the situation of the Mary Hudsons and the Commonwealths and various others who were price marketers and they now start to integrate and they produce or they refine but they're crude deficient? A. Yes, sir.

(Court) And you said if you got too many of those, it would tend to, as I understood you to say, tend to lessen

the supply of gasoline available. Did you say that? A. The argument is something like this that Mary Hudson is not now a refiner. Were she to enter refining as well as (T. 648) marketing, that would increase the supply of gasoline available because the amount of gasoline she'd been buying the past from others would now be made available to the unbranded market and she would be producing; but as you begin to exempt not only her now but then you begin to add the Careos and the Ashlands and so on and you permit them to expand their direct options they're going to be taking gasoline away from the Mary Hudson or in this case Mary Hudson is no longer a price marketer, she's an integrated refiner so let's talk about her brother, Fisca, going to be taking gasoline away from him and routing it through your own controlled, owned directly operated outlets; and to that extent the exemption of the independent refiner-marketer would lessen competiton.

(Court) But isn't it so that these crude deficient refiners also have to have an independent market to maintain their efficiency? A. They sell whatever they're not able to direct to their own clients.

(Court) So we have a proliferation of these independent refiners and they have gasoline left over which they can't use through their own controlled dealership and that becomes more on the market, doesn't it? A. Yes, sir and that makes it pro-competitive.

(Court) That makes it pro-competitive. (T. 649) A. Yes, sir.

(Court) Well, isn't that what you want? A. I do, but the point is if they increase the number of outlets now not refineries, but outlets, that they control themselves, then they'll be withdrawing surplus gasoline from the spot market and running it through their own outlets and that is—

(Court) Well, when does the time arrive when they never reach the situation where they have surplus gasoline, can you say that? A. Well, it would be reached when their—the volume through their own outlets equalled the refining capacity that they own.

(Court) Have you ever known that to— A. No, sir, no. This is a prospect. This is not a—

(Court) What is the likelihood of the prospect? A. Well, if—I don't see it as terribly unlikely, sir, because the—we have a situation where there will be a growth in direct marketing. It isn't a short-term prospect but it is certainly part of the forces that work here.

(Court) But if there's going to be a surplus from the independents available to the marketers and they're anxious to sell that, isn't that good for the man on the street (T. 650) who's driving around in his car? A. Yes, sir, that's exactly the surplus that I want to preserve by and I think this law does preserve that surplus. It prevents that capacity from being directed through an increased number of integrated outlets. So it says that if Ashland—

(Court) But doesn't the law of supply and demand have any part to play in this situation, where you get a surplus of a product, isn't the price apt to decrease? A. Yes, sir; and that's exactly the advantage that the price marketers in the past have exploited and they have gotten gasoline cheaper and they have passed it on in the form of increased discounts that have tended to bring the price structure of the market down.

(Court) And yet you're telling me if we proliferate the independent refiners who have surplus gasoline to sell that's somehow— A. No, sir, I'm not saying proliferate the refiner. I'm saying if Ashland now has—I've forgotten the number, twenty outlets in Maryland.

(Mr. Drogula) Seventeen.

A. Seventeen, if they now go to seventy-five outlets in

Mryland, much of the gasoline that they were now selling to the Hudsons and to the Sears and to the Wards and these (T. 651) others will be withdrawn from that market and channeled through their own outlets and—

(Court) You're assuming then that the status is going to remain forever quo and, therefore, there's not going to be any Mary Hudsons coming into the picture. A. Well, there's great difficulty, sir, and as the questions I think of the attorney from Ashland have pointed out that operating a refining system without, you know, clear, favorable access to crude is a tough proposition and it's not an attractive proposition that invites a number of investors to come in. We look at the—

(Court) I realize that, but you've told me that if we have a proliferation of these independent marketers who go into refining and, therefore, have gasoline left over, that that's going to drive the market out. I just don't understand it. A. No, I don't say that at all. Mary Hudson's moving into refining will increase the supply of gasoline and will be pro-competitive. I quite agree with you there.

(Court) But you said if it went on beyond that and we had— A. No, I'm speaking of the other direction. Given now no increase of the refining capacity but now an increase in the controlled gallonage that moves through direct outlets, (T. 652) that would reduce the supply of gasoline available to price marketers.

(Court) All right. A. It moves it from type of outlets who cut price to outlets who follow the price.

(Mr. Drogula) Your Honor, may I ask a question or two along those line?

(Court) Yes.

FURTHER CROSS EXAMINATION

By Mr. Drogula:

Q. Doesn't your analysis, Professor, assume as you've just indicated that there will be no corresponding increase in refining capacity? A. It does.

Q. Would you have any facts to justify your opinion, if it is your opinion, that Ashland Oil has not and will not continue to increase its refining capacity? A. I–I–no, sir.

Q. Are you aware of the fact that the Ashland Oil Company has doubled its refining capacity in the last seven years? A. I'm not aware of the figure. I do know that there is expansion at the Kentucky facilities, I know that.

Q. Are you not aware of the fact that through this same period of time Ashland has continued the same percentage (T. 653) of selling approximately sixty percent of its supply to independent marketers like Mary Hudson? A. I don't know that. That's not information that's been available to me in the past and–

Q. But you testified to–if it is a fact that independent refiners as they proliferate and as they continue to operate their company stations, expand their refining capacity so that they can both serve their own outlets and continue to serve independent marketers, then there are no anti-competitive effects, are there? A. As long as the supply would increase, that would meet the objection I have, yes, sir.

Q. So that your whole thesis depends upon your assumption that independent refiners are not going to be expanding their refining capacities commensurate– A. It's predicated on the notion that they will not expand the proportionate output that they direct to their own channels.

Q. But you have no fact– A. That they will–my

impression is–my projection is that the trend in the future as a result of the changed structure of the industry will cause firms which had previously sold on the wholesale market to try to sell more to their own outlets, for firms which is sold to dealers to try to sell (T. 654) now more through employee run outlets, that the direct operation of stations as a part of a response to the change in the economic structure of the oil industry which has been taking place in the last three years.

Q. Are you familiar with the section of the pretrial order which shows that Ashland has fewer company operated stations today than it did six years ago? A. I've read the pretrial order. I don't remember that specific fact.

(Mr. Drogula) I have no further questions, Your Honor. Thank you.

(Court) All right, sir, you can step down, thank you.

(Mr. Woodstock) Your Honor, the State had originally intended to call a fourth witness, Dr. Albert Page, but in light of the ruling on Paragraph D and upon review of the deposition testimony, we feel we're unable to call him to testify in the remainder of these proceedings.

(Court) All right, sir.

(Mr. Woodstock) The only remaining thing we have would be the introduction of certain parts of the deposition (T. 655) of the BP Oil Corporation which we reserved the right to do, as you recall, when the Plaintiffs introduced their pages.

(Court) All right, sir.

(Mr. Woodstock) And I'm halfway through reviewing them with their counsel and perhaps if we can take a brief recess, I can finish up on that and come back and do that; and I think we'll be in a position to rest.

(Court) All right, will you let me know when you're prepared to proceed?

(Recess)

(Mr. Woodstock) May it please the court, the State will proffer the BP-the deposition of BP Oil Corporation in its full form with the stipulation and understanding of the parties that those portions relating to price supports are not to be considered as being introduced.

(Court) Can you give me those pages, sir?

(Mr. Woodstock) If Your Honor would allow me, I could do that over the weekend and provide it Monday.

(Court) All right.

(Mr. Woodstock) It's quite a job of dissecting it.

(Court) What I meant was that the pages involving the price support testimony, otherwise you want me to read the whole thing, I take it.

(Mr. Woodstock) What I'd like to do if it's (T. 656) agreeable with the court is—and the Plaintiffs, provide the court with a lined out copy of that portion of the testimony dealing with price supports.

(Court) All right.

(Mr. Noonberg) That's perfectly okay with us, Your Honor.

(Court) All right.

PLAINTIFFS' EXHIBIT NO. 3

KAYO OIL COMPANY
MARYLAND STATIONS

Station	Date Opened	Present Status
Salisbury, Maryland	6/ 7/64	Open
Fruitland	8/ 1/64	Open
Baltimore-Park Heights	8/23/64	Open
Baltimore-York Road	9/27/64	Closed
Baltimore-Belair	11/10/64	Open
Baltimore-Preston	11/12/64	Closed
Hagerstown	11/19/64	Open
Baltimore-Liberty	11/19/64	Closed
Pulaski	11/21/64	Closed
Baltimore-Montebello	11/ 6/64	Open
Baltimore-Fayette	11/25/64	Open
Baltimore-Remington (W. 29th St.)	12/16/64	Open
Silver Spring	1/ 1/65	Closed
Cambridge	3/17/67	Open
Lexington Park	3/28/69	Open
Finksburg	6/18/69	Open
Baltimore-Ft. Smallwood	6/ 2/72	Open
LaVale	3/10/72	Open
Cumberland	6/29/73	Open

PLAINTIFFS' EXHIBIT NO. 4

AFFIDAVIT OF
GEORGE W. RUPPERSBERGER

In the Circuit Court for
Anne Arundel County

Equity Nos. 22,461, 22,069, 22,091, 22,216,
22,501, 22,562 and 22,551

Gulf Oil Corporation, et al.,
Plaintiffs,

v.

Marvin Mandel, Governor, et al.,
Defendants.

George W. Ruppersberger, being duly sworn upon oath, deposes and says:

If I were called as a witness in the trial of this action, I would testify as follows:

1. I have had more than 39 years of experience as an employee of Gulf Oil Corporation ("Gulf"). My experience has included virtually all phases of the marketing of petroleum products, including but not limited to service station retailing. By virtue of this experience, I am thoroughly familiar with Gulf's policies and practices of petroleum marketing.

2. I am presently the Director of Retail Marketing, Eastern Region, of Gulf Oil Company, U.S., a division of Gulf Oil Corporation, and have held this position since November 1, 1970. Gulf's eastern region consists

of 16 states, including Maryland, Delaware, Pennsylvania, Virginia and West Virginia plus the District of Columbia. My duties include the supervision of distribution and marketing of gasoline and other petroleum products in the eastern region. My areas of responsibility are sales, promotion, business development, self serve activities, acquisition of new dealers, the development of additional stations, the granting of temporary competitive allowances, and, generaliy, all areas relating to the marketing of petroleum products.

3. In addition to my duties with Gulf, I am chairman of the Philadelphia Governmental Affairs Committee of Pennsylvania Associated Petroleum Industries. Basically, this Committee is engaged in

Also, I am a member of the Gas and Oil Group – National Defense, Executive Reserve. This Group is engaged in

In connection with this Group, I have been appointed manager for petroleum for the State of Delaware in the event of an emergency.

4. Prior to assuming my present position as Director of Retail Marketing, I was Gulf's district sales manager in Philadelphia, Pennsylvania. I held this position for approximately four years. My duties included the supervision of the distribution and marketing of gasoline and other petroleum products for Gulf's Philadelphia district.

5. Prior to becoming Gulf's district sales manager for the Philadelphia district, I was Gulf's district sales manager in Baltimore, Maryland. I held this position for approximately three years. This, too, involved the supervision of the distribution and marketing of gasoline and other petroleum products.

6. Other positions which I held for Gulf have included assistant manager for the Baltimore district, Baltimore City sales manager, real estate representative and real estate supervisor for the Baltimore district, sales representative in the metropolitan Baltimore area, service station manager, assistant service station manager and, initially, service station attendant.

7. As set forth in paragraph 13 of the Pretrial Order, Appendix B – Stipulated Facts Concerning Gulf Oil Corporation, Gulf has a wide variety of retail gasoline outlets in Maryland. This variety of retail gasoline outlets in intended to satisfy consumer demand and to be competitive.

8. Gulf continuously evaluates whether its outlets are satisfying consumer demand. The basic consideration in determining whether an outlet is satisfying consumer demand is whether a sufficient volume of petroleum products is sold at the outlet to support a dealer and/or return a profit to Gulf. From time to time, even if an outlet were not to return a profit to Gulf, but maintained a sufficient volume to support a dealer, Gulf would permit the operation to continue in order to maintain Gulf's market representation.

9. As set forth in paragraph 16 of the Pretrial Order, Appendix B – Stipulated Facts Concerning Gulf Oil Corporation, Gulf presently anticipates owning and operating 23 retail gasoline outlets in Maryland. Twenty-two of these outlets are planned to be phased in over a five year period and one is already in operation. All are intended to be self service operations. This is predicated upon Gulf's belief that in today's relatively high priced retail gasoline market, many consumers prefer the lower price gasoline available at

self service operations, as well as the efficiency and speed which some consumers derive, as opposed to having to wait for a service station attendant to become available.

10. Gulf believes that the 23 self service stations presently anticipated represent a fair response to consumer demand. These 23 stations are planned to be company operated, because, in Gulf's view, there are a number of advantages in company operated stations, including the following:

(a) Greater efficiency.

(b) Control of the hours of operation and level of service.

(c) Ability to promptly and competitively respond to price changes in the market.

(d) Lower costs to the consumer, enhancing Gulf's ability to effectively compete.

(e) Experimentation with innovative competitive marketing techniques, e.g., tool rentals, sale of miscellaneous items such as home and garden supplies, ice and milk.

(f) High standards of service and cleanliness.

(g) High standards of design and generally attractive appearance.

(h) Fast "no frills" sales.

11. Certain of the advantages of company operated stations become particularly important in times of gasoline shortage. For example, with company operated stations, Gulf can quickly and effectively stagger the hours of operation of its company operated stations, in order to lessen hardship to the consumer in not having

gasoline available during such "off hours" as late evenings and Sundays. Without company operations, control over the hours of operation of retail outlets is more difficult, since, generally, Gulf's independent dealers have the option to sell their allotted supplies quickly and curtail operations, thereby reducing their hours of work and business expenses.

12. A recent example of innovation through a company operated retail gasoline outlet is the "Tire Hut" operation, which has been opened in Gulf's Philadelphia District. Essentially the "Tire Hut" is a discount auto, home and garden center where gasoline is also marketed. This operation commenced at company owned and operated outlets, and has since evolved into an operation whereby Gulf operates the auto, home and garden business, and an independent dealer operates the gasoline pumps. Gulf's early experience with the "Tire Hut" operation has shown it to be a highly effective technique in gasoline marketing, and intends to commence "Tire Hut" operations in Maryland. A picture of one of the "Tire Hut" outlets in Philadelphia is attached as Exhibit 1 hereto.

13. Although, as demonstrated above, company operations can be a highly effective marketing technique, Gulf views company operated retail outlets as one alternative marketing technique to be employed in accordance with consumer demand. Gulf does not view company operations as an exclusive marketing technique, and has no plans to employ the company operated retail outlet as an exclusive marketing technique. Gulf presently intends to employ company operated retail outlets in approximately 10% of its retail outlets, both nationwide and in Maryland.

14. I believe that it is important for Gulf to keep open its option to employ company operated retail outlets as a marketing technique, because, in this

manner, I believe that it can best serve consumers and itself. If Gulf is limited in the manner in which it can market gasoline, its ability to respond to changes in market conditions and to attempt marketing innovations, such as "Tire Hut", is restricted; and the consumer loses the benefit of potentially lower gasoline prices. The only way that Gulf can effectively ascertain consumer demand is to offer different styles of marketing, services and products to the consumer. If this flexibility is denied, Gulf will be unable to ascertain consumer demand in the most effective manner. Therefore, any restriction upon company operation will be a disservice to the consumer, in my opinion.

15. In addition to the foregoing, I believe that the elimination of Gulf, as well as other vertically integrated oil companies, as an element of competition in the retail gasoline market can only be harmful to the consumer. In my opinion the consumer is best served by a wide variety of entities competing in the retail gasoline market, because the wider the variety the greater the competition. Conversely, restricting this variety, as do Paragraphs B and C of the challenged legislation, restrict competition.

16. In my opinion, Paragraphs B and C of the challenged legislation are vague and ambiguous, insofar as they refer to "producer" and "refiner" of petroleum products. I have been informed by Gulf's attorney that certain issues concerning these terms have been presented to the Court in a Motion For Partial Summary Judgment, filed August 6, 1975, together with supporting affidavits and memoranda. Such pleadings are incorporated herein by reference.

17. If Gulf is forced to divest its present company operated station in Maryland, there is, in my opinion, a high degree of risk that its value will be diminished. Such risk lies in the uncertainty of being able to find a qualified dealer to operate the station and to retain or develop business. The forced sale or lease of Gulf's company operated station, in my opinion, would reduce Gulf's bargaining leverage in securing a qualified dealer.

18. Under certain market conditions, Gulf grants temporary competitive allowances to its branded retail dealers. Gulf's purpose in granting such allowances is to provide competitive and equitable assistance in gasoline prices to Gulf dealers who are injured by local competitive gasoline price reductions of competing retails which are subsidized by their suppliers.

19. Temporary competitive allowances are granted within competitive trade areas in Maryland and surrounding states. Generally speaking, a competitive trade area is a geographical area containing one or more Gulf dealers who are affected to a similar degree by the same set of competitive circumstances. As a general rule, Gulf dealers located in a given competitive trade area will be granted the same temporary competitive allowance, in order to enable Gulf to meet competition. The number of Gulf retail dealers falling within any competitive trade area varies depending upon competitive conditions. Similarly, the geographical boundaries of a competitive trade area change from time to time, depending upon competitive conditions. Also, a competitive trade area is not limited to a particular state, and, in fact, frequently crosses state lines.

The same competitive trade area may include portions of Maryland and the District of Columbia. For example, a Gulf station located at 9501 Georgia

Avenue, Silver Spring, Maryland, was at times located in the same competitive trade area as a Gulf station at 7812 Georgia Avenue, Washington, D.C. Similarly, a competitive trading area in the Hancock, Maryland area extended along U.S. Route 522 from Warfordsburg, Pennsylvania, through Hancock, Maryland, to Berkley Springs, West Virginia.

20. Gulf has not granted temporary competitive allowances in Maryland since February, 1973. At the time that temporary competitive allowances were being granted, Gulf's policy and practice were to grant such allowances within competitive trade areas and not on a statewide basis.

21. When Gulf grants a dealer a temporary competitive allowance, it does not, directly or indirectly, secure the dealer's agreement that the allowance will be reflected in a lower retail price. Whether the dealer will account for his lower cost resulting from the allowance by reducing his retail price is a decision solely within his discretion.

22. In my opinion the uniform allowance required by Paragraph D of the challenged legislation would be detrimental to both the Maryland consumer and the independent service station dealer and would discriminate among suppliers of gasoline. Paragraph D would make it economically prohibitive for Gulf to grant temporary competitive allowances, because such allowances would have to be granted to each of the 218 independent Gulf dealers in Maryland. Therefore, Gulf probably would not grant any temporary competitive allowances. This would adversely affect the consumer, who, absent such allowances, will not reap the benefit of lower prices ordinarily generated by such allowances. This would also affect Gulf's independent dealers, who

would not receive allowances to help them meet competition supported by their competitors' suppliers. Therefore, such dealers either would have to reduce their profit margin in order to meet local competition, or maintain competitively high prices, thereby risking a loss of their share of the local market.

23. The challenged legislation also discriminates in favor of petroleum suppliers who supply a relatively small number of retail outlets in Maryland. Such suppliers would not find it economically prohibitive to grant temporary competitive allowances to their relatively small number of outlets. Since the major oil companies, such as Gulf, would find the granting of such allowances economically prohibitive because of Paragraph D, they are the objects of discrimination.

24. In my opinion the term "voluntary allowances", as set forth in Paragraph D, is vague. From time to time Gulf grants its dealers retail abatements, e.g. in the event of a service station revamp or rebuild, traffic disruption due to street repairs, temporary road closing and sewer installation. It is not clear whether the term "voluntary allowances" set forth in Paragraph D covers such rental abatements. If such abatements are considered to be voluntary allowances, Paragraph D would require the extension thereof throughout the state. Obviously, this would be economically prohibitive; and Gulf would not grant any relief to the dealer. Therefore, Gulf's independent dealer who, absent Paragraph D, would receive assistance would, in the absence of assistance, sustain a possibly serious loss.

25. Gulf leases or subleases a substantial number of properties to independent dealers to operate as retail gasoline outlets. Certain equipment is ordinarily included in the lease of a fully equipped service station

facility, e.g. pumps, tanks, lifts, lights and air compressors. Such equipment is included in the lease rental, without any apportionment for the equipment. The equipment ordinarily is not a factor in ascertaining the rental. Rather, the underlying consideration in determining what rental should be charged for a given property is the value of the property as commercial real estate used as a retail gasoline outlet. A wide variety of considerations enter into the determination of value, such as location, costs of property, size and attractiveness, visibility and local regulations.

26. Paragraph E of the challenged legislation requires uniform "equipment rentals" without defining the term "equipment rental". Therefore, it is not clear whether that term includes equipment such as described in paragraph 24 above, which ordinarily is included within a lease agreement without any separate apportionment. In my opinion, therefore, the term "equipment rentals" is vague and ambiguous.

(Notarized) /s/ George W. Ruppersberger.

PLAINTIFFS' EXHIBIT NO. 8

AFFIDAVIT OF ROBERT G. KELVEY,
VICE PRESIDENT, REAL ESTATE
PETROLEUM MARKETING CORPORATION

In the Circuit Court for
Anne Arundel County

Equity No. 22,069

Petroleum Marketing Corporation,
Plaintiff,

v.

Marvin Mandel, Governor et al.,
Defendants.

State of Virginia, County of Fairfax, ss:

I HEREBY CERTIFY, that on the 14th day of October, 1975, before me, the subscriber, a notary public of the State of County aforesaid, personally appeared Robert G. Kelvey, and made oath in due form of law, as follows:

1. To date, I am the Vice President of Real Estate of the PETROLEUM MARKETING CORPORATION and am responsible for all of its real estate investments, activities, and more particularly, for the twenty-one "SCOT" service stations, real properties and leased as well as improvements thereto, in the State of Maryland.

2. In response to Defendants' Interrogatory No. 23, (attached as Exhibit A), Petroleum

Marketing Corporation ("PMC") provided certain investment data respecting the PMC real properties, leases, and improvements in Maryland. I hereby certify that the same data is a true and correct summation of the cost of PMC investments in such real properties, leased properties, and improvements at the time of their agreements of leasings, the same totaling $2,043,710.00.

3. Further, Exhibit B, also attached to this Affidavit, sets forth in net book value of the investments described above, as of September 30, 1975, the same totaling $1,328,083.00.

4. I make all of the aforesaid statements based upon my personal knowledge of the information therein and am competent to testify about all of PMC's real estate investments, including those in the State of Maryland.

(Affidavit) /s/ Robert G. Kelvey.

Affidavit - R.G.Kelvey
Exhibit A

Petroleum Marketing Corporation

Interrogatory #23: State your investment separately in land, building and equipment for the company-operated Petroleum Marketing Corporation stations. Do not include any inventory of salable products or items. List all the specialized equipment found in a Petroleum Marketing Corporation company-operated station which would not be found in a Petroleum Marketing Corporation leased dealer station.

Response to Interrogatory #23:

Station	Owned (O)/ Leased (L)	Land	Building	Equipment	Total
MD 001	L	--	9,753	19,967	29,720
MD 002	O	76,628	21,789	15,608	114,025
MD 003	O	40,576	46,325	23,569	110,470
MD 004	O	45,496	29,452	17,515	92,463
MD 005	L	--	22,051	17,482	39,533
MD 006	L	--	38,074	12,848	50,922
MD 007	O	201,535	60,327	29,215	291,077
MD 008	O	39,512	30,715	19,171	89,398
MD 009	L	--	26,103	29,100	55,203
MD 010	L	--	81,769	29,943	111,712
MD 011	L	--	35,469	16,322	51,791
MD 012	L	--	--	10,341	10,341
MD 013	L	--	21,854	25,965	47,819
MD 015	O	132,764	66,501	29,619	228,884
MD 016	O	44,845	29,143	16,199	90,187
MD 018	O	142,191	71,572	29,097	242,860
MD 019	L	--	28,006	37,243	65,249
MD 020	L	--	9,750	17,426	27,176
MD 021	O	81,647	45,375	21,730	148,752
MD 022	L	--	94,072	32,520	126,592
MD 023	L	--	4,000	15,536	19,536
Totals		805,194	772,100	466,416	2,043,710

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Affidavit - R.G.Kelvey
Exhibit B

Station	Owned (O) Leased (L)	Land	Net Building	Net Equipment	Total Net Book Value As Of 9/30/75
MD 001	L	--	-0-	4,117	4,117
MD 002	O	76,628	2,628	1,681	80,937
MD 003	O	40,576	21,961	3,102	65,639
MD 004	O	45,496	-0-	2,474	47,970
MD 005	L	--	-0-	4,972	4,972
MD 006	L	--	10,108	896	11,004
MD 007	O	201,535	39,761	12,218	253,514
MD 008	O	39,512	99	5,226	44,837
MD 009	L	--	-0-	2,758	2,758
MD 010	L	--	63,661	17,197	80,858
MD 011	L	--	319	4,468	4,787
MD 012	L	--	-0-	564	564
MD 013	L	--	17,010	14,819	31,829
MD 015	O	132,764	41,894	10,713	185,371
MD 016	O	44,845	678	5,125	50,648
MD 018	O	142,191	50,427	12,961	205,579
MD 019	L	--	21,554	21,998	43,542
MD 020	L	--	-0-	4,327	4,327
MD 021	O	81,647	-0-	3,008	84,655
MD 022	L	--	80,552	24,274	104,826
MD 023	L	--	3,213	12,136	15,349
Totals		805,194	353,865	169,034	1,328,083

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PLAINTIFFS' EXHIBIT NO. 10A

The Honorable Eugene M. Childs
Judge
Circuit Court for Anne Arundel
County
Courthouse
Annapolis, Maryland 21404

Re: Shell Oil Company, et al. v. Marvin Mandel, Governor, et al., Equity Nos. 22,216, 22,069, 22,091, 22,461, 22,502, 22,551, 22,562

Dear Judge Childs:

Enclosed is a copy of the Affidavit of Walter D. Naughton and attached exhibits which were filed today with the Court.

The affidavit and attached exhibits of Mr. Naughton, Area Manager for the Southeast Area of Shell Oil Company, are being offered as evidence in Shell's case-in-chief in this action. The enclosed affidavit and exhibits were filed in lieu of either direct or cross-examination pursuant to an agreement reached between counsel for Shell and counsel for defendants, as a result of Your Honor's endorsement of such a procedure on August 22, 1975.

Sincerely yours,

/s/ William Simon
Counsel for Plaintiff
SHELL OIL COMPANY

/s/ John A. Woodstock
Counsel for Defendants

Enclosure

PLAINTIFFS EXHIBIT NO. 10C

In the Circuit Court for
Anne Arundel County

Shell Oil Company, et al.,
Plaintiff,

v.

Marvin Mandel, Governor, et al.,
Defendants.

County of Harris, State of Texas

Equity Nos. 22,216
22,069, 22,091, 22,461,
22,502, 22,551, 22,562

COUNTY OF HARRIS)
) ss:
STATE OF TEXAS)

AFFIDAVIT OF WALTER D. NAUGHTON

WALTER D. NAUGHTON, being duly sworn upon oath, deposes and says:

If I were called as witness in the trial of this action, I would testify as follows:

1. I am the Marketing Manager for the Southeast Area of Shell Oil Company. My responsibility involves

all aspects of retail marketing in the Mississippi to Pennsylvania corridor, including the State of Maryland. As a result of almost 27 years of experience, largely in marketing, I have had the opportunity to progress through various senior assignments with Shell Oil Company. Over the years, assignments such as District Sales Supervisor, Division Retail Manager, District Manager, Manager of Head Office Market Development Division, and my present assignment as Marketing Manager have provided an extensive background in service station retailing and other aspects of petroleum marketing. I believe that my knowledge and operational skills qualify me to render appropriate evaluations of gasoline marketing concepts and consumer attitudes in general, and with respect to the Maryland market in particular.

Paragraphs B and C of the Maryland Act – Company Operated Stations

2. The needs and desires of the consumer of gasoline and other retail petroleum products and related services vary greatly, ranging from those who will sacrifice all service in order to obtain products more quickly and inexpensively to those who wish all traditional amenities or extraordinary and consistent product quality, service and repair availability. In order to satisfy these consumer demands, there is a wide range of approaches to marketing products at the retail level. Some companies operate through stations which furnish complete automotive service, others market only gasoline and motor oil. Retail stations may be either full self-service or operations where attendants fill the customer's tank. Other stations combine retail gasoline sales with car wash and urban convenience grocery stores. The trend in the last decade has been to

multi-pump islands, high volume stations, yet there still remain many single-pump island grocery stores or restaurants which sell gasoline.

3. Gasoline retail operations can be classified basically into company operations, which are run by the company with a manager, and dealer operations, which are controlled by independent businessmen. Like a company's operation of its station, a dealer makes independent decisions concerning his operation. A dealer, for example, determines what products will be stocked and sold, the range of mechanical services to be offered, and the prices he will charge for his goods and services. Although company representatives may act as counselors to these independent entrepreneurs on matters ranging from financial management to manning, offering advice based on market research and business experience gained both through company operated stations and marketing techniques found to be successful by independent dealers, a dealer is free to accept or reject such advice.

4. Retail gasoline marketers consist of companies like Shell, which are sometimes referred to as "major" brand companies, companies such as Petroleum Marketing Corporation, which are sometimes denominated "private" brand marketers, traditional chain merchandisers like Sears and individual marketers that may operate only one station and who may purchase gasoline on the "spot" market. Competition in the gasoline marketplace results from the operations of all such marketers and such competition is based upon the marketing style of each particular operation, which, of course, can vary in terms of the total range of consumer needs and desires.

5. Shell attempts to satisfy, and thus competes for, the full spectrum of consumers. To this end, it has followed the principles of competitive marketing and competitive innovation. Its types of operation, that is the various marketing styles through which it operates, as well as its methods of operation, both dealer and company operated stations, reflect this end. Photographs and descriptions of typical Shell branded facilities are attached hereto as Exhibit 1 and incorporated herein by reference. Improvements in product quality, construction of new and modern stations, modernization of existing stations, training of prospective dealers and managers, development of new merchandising and sales promotion methods, advertising programs, and product distribution through both company and dealer operated stations all contribute to Shell's effort to create an image as well as marketing styles that will appeal to and satisfy the needs of the motoring public.

6. Shell has traditionally operated the majority of its stations with independent dealers, as opposed to company personnel. The incentive of a dealer is more suitable to many operations and it is Shell's policy that its operations should compliment dealer operations in particular, and the marketplace in general. Indeed, it would be both burdensome and impractical for Shell to assume control over and adequately monitor the operation of the approximately 8,900 directly served Shell branded retail outlets. To my knowledge, most "major" suppliers operate a majority of their stations with independent dealers.

7. The operations of independent dealers with respect to the marketing of petroleum products is not only recognized and honored by Shell, but it is

essential to the continued operation of Shell's marketing distribution system. Shell's relationship with its dealers is and has always been of utmost importance to Shell. Indeed, only 384, or less than 5 percent, of the total number of directly served Shell branded retail outlets are company operated. Of the 384 stations, 180 are tunnel car washes, 135 are self serve, 15 are gasoline only, 4 are self repair and 50 are conventional full service stations.

8. Similarly, Shell recognizes the viability of "independent" or "private" brand marketers and it is my opinion that the Maryland Act would adversely affect such operations in the State of Maryland. Furthermore, it is my opinion that the Maryland Act would inhibit the backward integration into refining or producing of those companies whose operations are limited to marketing. Likewise, it would inhibit the forward integration into marketing of small independent refiners or producers.

9. Apart from my belief that all marketers should have the right to participate in the retail marketing of petroleum products, it is my opinion that the consumer is best served by a mix of all types as well as methods of marketing petroleum products. It is my opinion that the elimination of any particular element or source of competition in the marketplace can only have effects which are harmful to the consumer. It is my opinion that Paragraphs B and C of the Maryland Act not only eliminiate one element of competition from the Maryland market, but they will have the effect of insulating and sterilizing that market from the benefits, including economy, convenience, facilities available, standards and quality of service, and marketing developments, that result from such competition.

10. Shell presently serves Maryland retail gasoline and petroleum product consumers directly through one Shell branded outlet which is operated by the company, and through 194 Shell branded outlets which are either owned or leased by Shell and then leased to and operated by independent businessmen, and through seven Shell jobbers. Due to the fact that the latter two methods of operation are conducted by independent businessmen, Shell has no control over the products or services offered to the consuming public through those outlets.

11. While Shell only has one company operated station in the State of Maryland at the present time, it is Shell's policy to constantly assess retail markets in terms of the development of new as well as the implementation of existing marketing techniques. It is Shell's belief that some of the consumer's needs can best be met, in terms of economies or the development or implementation of standards or concepts, through the operation of company stations. It is my opinion that denial of this method of marketing would be harmful to all of Shell's operations and, therefore, the consumer of petroleum products.

12. Shell company operated stations offer direct benefits to the consumer in terms of greater convenience and maintenance of high standards of service and cleanliness. In addition, Shell's innovative stations, certain of which, in my opinion, do not lend themselves to traditional dealer operations, provide a direct benefit to the consumer through cost savings and improved station merchandising and service. Indirect consumer benefits of company operated facilities are realized through Shell's development of innovative marketing techniques and procedures, financial control systems,

and evaluation and utilization of highly specialized equipment. All these consumer benefits evolve, of course, from Shell's commitment to both its company and dealer operated stations.

13. Shell's company operated stations provide a prominent example of the need for and the use of such outlets for testing and developing various innovative marketing concepts. By operating innovative outlets on a company basis, Shell can guage the potential of new concepts and arrive at a realistic analysis of their acceptability to the motoring public. Furthermore, company operated facilities enable the establishment of those standards and procedures necessary to adequately test and evaluate the concept under study. In my opinion, the resulting benefits enure not only to Shell, but also to its independent dealers and the consumer. Company operated stations permit Shell to compete with other suppliers in testing new marketing concepts under realistic market conditions. This, in turn, enables Shell to provide its independent dealers with an established, proven marketing method capable of generating a profit, as opposed to an untested marketing concept that is unknown to the consuming public. In a company station, Shell is able to control and thus to promote a new marketing concept in a specific and positive manner by establishing the price of its gasoline at a price which it deems competitive and ensuring that services are given free or as otherwise advertised; that the attendants wear clean and attractive uniforms and provide quick and courteous service; that the manager of the station has sufficient help; that the station's hours of operation accommodate the motorists in the particular area; and that sound business practices in merchandising are followed. Through experience,

Shell has found that absent the use of new and improved merchandising techniques and practices, both its company and dealer operated stations will lose customers to those stations which satisfy the latest consumer demands.

14. Typical examples of Shell's consumer oriented concepts, including types of retail outlets, which were or are presently being developed through initial testing at company operated stations, are automotive Self-Repair stations, gasoline self-service stations, tunnel car washes, Express Film Stops and AUTOSENSE mechanized diagnostic devices. Attached hereto as Exhibit 2 and incorporated herein by reference is a summary explanation, together with related material, of the manner in which these concepts were developed and introduced to the motorist. Shell, in determining whether the concept was a practical and efficient manner of meeting such a need or desire, was required to develop its concepts under controlled parameters within the actual marketplace.

15. The development and present operation of many of Shell's innovative outlets must be through company employees due to such reasons as high investment and realization of the cost-effectiveness of certain of the marketing concepts. Furthermore, in Shell's opinion, certain types of operation, like Shell's gasoline only facilities, generally do not appeal to the independent dealer since the opportunity for additional revenues from the sale of other products and repair services is not present. This does not mean that all innovative marketing must be continuously operated through company stations. In my opinion, however, it does necessitate that a company like Shell have the opportunity to experiment with its operations in light

of changing circumstances. Experience gained through trial marketing has demonstrated that innovative marketing techniques can be successfully tested only when the supplier plays a direct role in the operations. In light of the diversity of markets and customers, as well as new and ever-changing consumer demands, Shell feels that it can best serve the consumer, its dealers and itself by continuous adaptation of its retail operations to market demands. These facts, in addition to those set forth below, require flexibility in retail marketing. It is my opinion that it would be detrimental to the consumer to freeze marketing techniques in the pattern of yesterday or even today. It is my opinion that the public is better served if it is able to exercise a choice in terms of a mixture of types and a variety of methods of operations in the marketplace.

16. In addition to providing these benefits, Shell believes that company operated stations offer the consumer actual cost savings. Since Shell conventional-styled, company-operated stations price competitively with all other marketers (all "major" and "private" brand retail outlets, whether dealer or company operated), the consumer, in my opinion, may realize actual cost savings in the purchase of gasoline at such stations as compared to similar dealer operated stations. Furthermore, in terms of innovative operations, Shell tunnel car washes may offer wash and wax services either free or at a reduced price with the purchase of a specified amount of gasoline (see Exhibit 2) and Shell Self-Repair stations offer the consumer, at a per hour rate, the necessary tools and facilities to perform his own automobile mechanical work (see Exhibit 2). Likewise, it is my opinion that certain innovative outlets offer reduced costs due to the fact that they

provide the most efficient method of serving the consumer. Full company operated self-service stations, for example, generally require only one employee per shift. Since these people are company employees, they can be supervised by one field representative who moves about the marketplace overseeing operations and performing the administrative and management activities for several stations. In my opinion, this efficiency may manifest itself in reduced prices to the consumer.

17. In my opinion, company operated stations also serve a variety of other purposes which are directed toward the ultimate benefit of the consumer. More specifically, company operated stations have traditionally permitted suppliers like Shell to more effectively respond to the following market demands and conditions:

(a) *Development of New Stations* – In some new or expanding areas of operation, the number of customers may be too small to support an operation by an independent dealer. Accordingly, Shell must retain the right to operate these new stations until sufficient gallonage is achieved to attract a competent operator. This would be particularly true in areas where Shell is not a recognized marketer. In such cases, Shell would be required to build its public acceptance as a quality gasoline retailer through company operated stations before either customers or dealers could be secured.

(b) *Standards of Quality and Service* – Company operated stations provide an opportunity for Shell to demonstrate and provide standards for overall service station merchandising,

appearance and levels of customer service. This encourages dealers and jobbers to strive to achieve the highest standards of service station operation.

(c) *Response to Market Conditions* – Shell, through its company operated stations, attempts to initiate positive, quick and effective response to changing market conditions. This action is realized not only through the development of new merchandising and financial control techniques and equipment development, but also through operating procedure designed to ensure consumer satisfaction. During the energy shortage, for example, company operated stations, when possible, attempted to lessen the obvious hardships through coordinating the operating hours of various stations in the same area. Although such advice was offered to dealers, they had the option, as independent businessmen, to sell their allotted supplies quickly and curtail operations, thereby reducing normal expenses.

(d) *Source for "Temporary" Personnel* – Company stations employees allow for the continuous operation of a dealer station when that dealer dies or otherwise unexpectedly leaves the station. Without such available personnel to assume "temporary" operation of a station, the consumer may lack the convenience of his customary service and the new dealer may lose the benefit of the clientele built up through the previous operation. Although Shell, at times, has requested local dealers to continue such operations on a temporary basis, obvious business considerations indicate such a procedure is less desirable.

(e) *Training Schools* – Company operated facilities are also utilized as training schools. They provide a first-hand basis for learning the business of petroleum retailing. This experience may qualify a graduate to operate his own service station at a future date, or proceed in a professional career with Shell. This has been particularly valuable for the unskilled workers.

(f) *Source of Potential Personnel* – Company operated stations also serve as a source for potential dealers. Those Shell dealers coming from the ranks of its company operated station employees are well trained in the fundamentals of the service station business. Furthermore, company stations provide a reservoir of personnel for promotions to supervisory and executive positions within the Shell Oil Company. In the past, some top marketing officials started their careers with Shell as service station operators.

18. Finally, it is necessary to refer to the language of Paragraphs B and C of the Maryland Act which, in my opinion, insofar as it speaks in terms of "producers" and "refiners" of petroleum products is vague and ambiguous. I am aware that the various questions relating to these terms has been presented to the Court in a Motion For Partial Summary Judgment, and a memorandum in support thereof and in a Pre-Trial Brief. Those pleadings are incorporated herein by reference.

Paragraph D of the Maryland Act – Uniform Price Assistance

19. Under specified market conditions, Shell grants temporary price reductions, or "competitive allowances", to its branded retail dealers. Shell's policy in granting competitive allowances is to provide competitive and equitable assistance in gasoline prices to Shell dealers who are injured by local competitive gasoline price reductions of competing retailers which are subsidized by their suppliers.

20. A competitive allowance is intended for use when Shell's branded dealers suffer financial injury, in terms of loss of customers, reduced unit profit, or both, because a supplier in competition with Shell lowers its price to its retail dealers. By meeting its competition through reduced product cost to its dealers, Shell believes it enables those dealers to remain competitive and thus retain the business of their customers.

21. The "trade area" is the basic geographic area for the authorization of competitive allowances.

22. A trade area is a designated geographic area in which an assessment by Shell field personnel and staff analysts indicates that competitive marketing conditions are substantially the same. It is Shell's opinion that all service stations within a trade area have exposure to substantially the same customers and therefore the ability to compete with one another on a relatively equal basis. There are one or more, usually several, Shell service stations in each trade area. The areas may be of various sizes with the smaller ones generally in the more densely populated metropolitan districts where the customer potential is concentrated; larger ones are more characteristic of less populous areas or corridors along heavily traveled arterials where commuter or transient travel is heavy over considerable distances.

23. Decisions with respect to Shell's geographic delineation of competitive trade areas are based on such factors as the following:

- service stations that are in the immediate vicinity of each other will be considered in competition with each other, and even a one-cent differential at retail may result in substantial decrease in gallonage;
- service stations that are near each other but are separated by road networks or other artificial or natural barriers would not be in competition if motorists would not go out of their way to circumvent those barriers to obtain a more favorable price;
- rural stations will be in competition at greater distances than urban stations; conversely, stations in congested urban areas may not be in competition when one-half mile apart, whereas stations in sparsely populated urban areas may be in competition when several miles apart;
- service stations may be in competition when located substantial distances from each other if they are located along a highway frequented by commuters;
- service stations may be in competition when located substantial distances from each other if they effectively solicit business from a residential or business population located in the area between them;
- service stations may be in competition when located a long distance from each other if one is in a residential area and the other in a business area and a large number of motorists commute by automobile between the two areas.

In a particular "price war" situation, other factors, such as the following, must be given consideration:

- The amount of the price difference—Service stations may not be in competition at a retail price difference of one-cent per gallon but may be in competition at a retail price difference of three cents per gallon. This, in my opinion, is because motorists who would not go out of their way for a one-cent price difference may be induced to do so by a three cents per gallon lower price. It may be said that the affected area becomes larger as prices become more depressed;
- The length of time of the price differences—The price difference, even in a large amount, may have little or no competitive effect if it is of short duration. However, even a small price difference may have substantial effect upon competition if it is of long duration. The same result may be found where there are repeated short periods of price differences over a long period of time.

24. Shell's policy is to grant competitive allowances only when certain marketing conditions exist. First, Shell grants a competitive allowance only if a Shell dealer requests it; Shell never initiates price assistance. Second, the Shell dealer requesting the allowance must be able to demonstrate real business losses from competitors selling at lower prices. Third, Shell, and not simply its dealers, must determine it is meeting competition; it is not sufficient that a Shell dealer is

competing with a lower retail price, but that lower price must be supported by that competing dealer's wholesale supplier.

25. If Shell grants a competitive allowance to a dealer, it is Shell's policy to offer an equal allowance to all Shell dealers in the same trade area. To the extent necessary to avoid competitive injury, allowances in appropriate competitive amounts are also given to Shell dealers in adjoining trade areas. The amount of such allowances decreases as the distance from the trade area increases. This concept is known as "feathering."

26. In referring to Shell's then existing plan for granting competitive allowances, which was essentially the same as explained in paragraphs nineteen (19) through twenty-five (25) above, the Federal Trade Commission stated:

> That the Commission's statement of Policy [regarding competitive allowances] can be realistically applied to area price differentials in the petroleum industry was impressively demonstrated in recent hearings before a subcommittee of the House Select Committee on Small Business. There representatives of Shell Oil Company . . . testified that, in view of the Robinson-Patman Act, such "price assistance" as they give dealers is now offered to all their dealers in a competitive retail marketing area. Their testimony as to this practice emphasized essentially that the same elements as the Commission's Statement of Policy.

27. When Shell grants a dealer an allowance it does not, directly or indirectly, secure the dealer's agreement that the allowance will be reflected in a lower retail price. Whether the dealer will account for his lower cost

resulting from the allowance by reducing his retail price is a decision solely within the dealer's discretion. This is recognized by each Shell branded dealer who participates in Shell's competitive assistance program through execution of the form attached hereto as Exhibit 3 and incorporated herein by reference.

28. Apart from any possible legal conflict which exists between federal requirements and the requirements of the Maryland Act, it is my opinion that the uniform allowance provision of the Maryland Act would be detrimental to both the consumer and the independent service station dealer and it would discriminate among suppliers of gasoline. In particular it is my opinion that the following would happen with respect to the indicated groups:

> *Consumer* – the uniformity provision would result in higher gasoline prices to the consumer. When confronted with the choice of reducing prices throughout the State to meet local price competition or not reacting to such competition at all, a supplier may find it economically prohibitive to act competitively. For example, Shell, on the average, supplies 411,000 gallons of automotive gasoline per day within the State of Maryland. If Shell were to grant a price allowance of 3 cents for every such gallon, the cost to Shell would be approximately $12,000 per day. Thus a supplier, under the conditions imposed by Paragraph D, may not meet the local price competition. This may have the effect of inducing a higher overall price level than would have prevailed without the Act or forcing a withdrawal from the affected area, the State of Maryland. Both actions would be damaging to the consumer, the former by encour-

aging higher market prices and the latter by raising prices indirectly through reduced competition.

Dealers – As stated, it is likely that a supplier would find it economically prohibitive to meet the equally low price of a competitor in light of the broad price reductions required by the Maryland Act. Thus, a dealer would be forced to absorb fully the cost of reducing his price in order to meet local price competition, thereby experiencing a reduction in margin. Thus, the dealer would face the prospect of a decline in margin or, if he chose not to reduce his price, a decline in volume, either of which would reduce his profit and, if severe enough, may cause termination of employees, reduced customer service and ultimately business failure. The problem would be most acute in traditionally unstable markets, low-cost markets and in markets close to the borders of the State. In the latter case, there could be constant pressure on prices from dealers beyond the State boundaries but nonetheless in the same trade areas as dealers within the State. Those dealers beyond the boundaries of the State of Maryland would use price to attract business from within the State. The geographic boundaries established by the Maryland Act would, in my opinion, result in artificial, anticompetitive market actions.

Suppliers – The Maryland Act also discriminates in favor of those petroleum suppliers who market in the smallest area of the State. Since the cost imposed upon them by the Act are obviously less in amount, such a supplier could direct the impact of his power to the competitive disadvantage of not only other suppliers but also of particular

dealers. Generally, the larger the supplier, the less likely he could afford to meet competition in limited markets. As a consequence of not meeting competitive prices, the supplier may be forced to withdraw from the affected markets if lower volumes do not generate sufficient profits to meet an acceptable return on investment.

29. In addition to any possible conflict between Paragraph D of the Maryland Act and the federal law and, in my opinion, apart from Paragraph D's detrimental effect on the consumer, independent dealers and suppliers, Paragraph D of the Act raises further areas of concern. Specifically the term "voluntary allowances" is undefined in the Maryland Act and, thus, it is not clear whether that term would, for example, encompass granting rent relief or extending a rental abatement to a dealer for such reasons as avoiding the economic impact of a temporary road closing or mitigating the hardship of a fire at the dealer's station. If such rent relief is considered a "voluntary allowance", Paragraph D would require the extension of the allowance State-wide. There would be no economic basis for the landlord to grant the relief in such a situation and, again, the cost, in all likelihood, would be economically prohibitive. Thus, the individual dealer deserving such relief would be forced to suffer a loss.

Paragraph E of the Maryland Act – Uniform Equipment Rentals

30. Shell, of course, is engaged in the retail marketing of gasoline and related products. Shell sells gasoline to retail dealers under dealer sales agreements, a sample of which is attached hereto as Exhibit 4 and incorporated herein by reference.

31. As another part of its business, Shell leases or subleases service station properties to dealers under dealer leases, a sample of which is attached hereto as Exhibit 5 and incorporated herein by reference. Shell leases or subleases to dealers approximately 10,000 service stations nationwide and 194 in the State of Maryland. Dealers who lease or sublease service station properties from Shell are not required by contract to purchase gasoline from Shell. Nationwide, Shell gasoline is sold at approximately 10,000 additional outlets which are neither owned by nor leased to or subleased by Shell.

32. When Shell leases a service station facility to a dealer, the Shell-owned equipment at the station is included in the lease arrangement.

33. The rental charged by Shell for service station properties is determined by their value as commercial real estate for their intended use. Rentals, although most times payable in cents per gallon, with a minimum and sometimes a maximum dollar rental per month, are nevertheless set on the basis of the value of each property as commercial real estate at the time, and at its location. The rentals charged by Shell and rental increases are wholly determined by factors unrelated to the price of gasoline. These factors include the following:

(a) Traffic factors, including the direction, speed and density of traffic, and its variation during various periods of the day;

(b) The costs of land, construction, financing, and maintenance in the indigenous area;

(c) In the case of stations not owned by Shell but leased by Shell from others, and subleased to

dealers, the rental which Shell must pay as a lessee of that real estate;

(d) The amount of and increases in real estate taxes and assessments;

(e) The general location of the station, *e.g.*, whether it is located in an industrial, commercial, residential or tourist area;

(f) The population of the surrounding area, including its size, density, growth-rate, median age and income level;

(g) The number of registered vehicles in the neighborhood, the number of vehicles per household and the number passing the specific property;

(h) Competitive factors, such as the location of competing stations in the vicinity;

(i) Local statutory and non-statutory restrictions on service station construction and operation, including zoning regulations, regulations effecting hours of operation, fire codes, building codes, restrictions on delivery tank truck size, restrictions on the size of storage tanks, proximity ordinances, and construction moratorium;

(j) The size and shape of the site, with particular emphasis on its usable frontage adjoining principal stores or highways;

(k) Projected and potential changes in traffic patterns, population and service station leases;

(l) The location of the station, with particular emphasis on whether it is located at an intersection or in the middle of the block and the effect of nearby traffic signals and other restrictions upon entry into and exit from the service station;

(m) The visibility of the station from different streets, roads, highways and lanes of traffic and the ease of approach to the station from such points of visibility.

34. Some but not all of Shell's dealer leases provide for rent to be collected on the basis of the volume of gasoline delivered to the service station. The collection of rent in terms of cents per gallon has been Shell's historical method of operation, simply because it facilitates rent collection at the time of delivery. In other dealer leases, the rental is expressed in a flat dollar monthly sum.

35. In light of the landlord-tenant facet of Shell's relationship with its directly served dealers which, in varying degrees, would be similar to that of other landlord-suppliers and landlord-wholesalers of petroleum products, the requirement of applying "all equipment rentals uniformly to all retail service station dealers supplied" is not only ambiguous and vague, but it is without rational foundation. In my opinion:

– The ambiguity and vagueness of the requirement is demonstrated, for example, by the following questions:

whether "equipment" is limited to mean hand tools or storage tanks or gasoline pumps or lifts or automated car washes or the entire service station facility; whether "uniformly" is to be measured in terms of cents per gallon or a strict monetary basis per item of equipment; whether "uniformly" is used in the context of the various stratas of retail operations, that is in relationship to the comparison between a sparcely patronized

single pump operation and a sophisticated, high volume operation.

– The lack of rational foundation is evident from the following:

If rental of the entire service station premises is not within the proscription, a supplier would calculate the rental for each service station as a whole, including within the cost the rental value of all affixed equipment, which constitutes the majority of service station "equipment," made available. If rental of the entire service station premises is within the proscription, a uniform price requirement has no rational basis. Whether based on a flat monthly amount or in terms of cents per gallon, the uniformity would not take account of the differing values of properties. Apart from the question of location, only a small portion of a Shell service station property is devoted to the sale of gasoline. The leased premises include many areas not devoted to gasoline sales, such as service bays for repairs and automobile maintenance, storage areas, parking areas, office space, car wash area and yard. These amenities, facilities or attractions, as well as those factors set forth above, have property oriented values which differ from location to location. In this respect, properties are not "similar" and a "uniform" rental could not be calculated. Correlatively, a flat uniform charge to all dealers would have an economically prohibitive effect on the less prosperous dealers.

Similarly, if Paragraph E requires that rental abatements for such reasons as previously discussed (*e.g.*, fire damage) be uniformly extended, it would impose an economically prohibitive burden that undermines all correlation between the rental value of property and the rental charge.

Paragraph F of the Maryland Act – Uniform Allocation

36. Shell was and had been since its inception operating in conformance with the federal mandatory allocation program as administered by the Federal Energy Administration. The rules and regulations promulgated pursuant to the Emergency Petroleum Allocation Act of 1973 did not speak of allocation in terms of "uniform" allotments. Indeed, a fair and equitable system of distribution could not be established on a basis of strict uniformity. In my opinion, the requirement of Paragraph F of the Maryland Act – to "apportion uniformly all gasoline and special fuels to all retail service station dealers during periods of shortages on an equitable basis and [to] not discriminate among dealers in their allotments" – is in conflict with the nature of the federal requirements that had been set forth. The allocation requirements of the federal law were set forth in "Shell Oil Company's Motion For Partial Summary Judgment," filed May 27, 1975 and the "Reply" filed with respect thereto. Those pleadings are incorporated herein by reference.

37. Also, it must be recognized that Shell's policy has been one of fair and equitable distribution of petroleum products. Prior to implementation of the federal program in January 1974, Shell established a voluntary allocation system. Those documents attached hereto as Exhibit 6 and incorporated herein by

reference set forth the procedures adopted and, in my opinion, reflect Shell's policy, i.e., "developing a program which has full and primary emphasis on fairness and equity for all customers has been of prime concern. Our usual objective of maximizing profitability, in fact all concerns of commercial significance, must be secondary to concerns of fairness and equity in the implementation and administration of an allocation program."

38. The part of Shell's voluntary allocation procedures set forth below, which is essentially the same as the parallel federal laws that were developed, exemplifies the inconsistency between a strictly uniform allocation and an equitable distribution system:

RETAIL MARKETING

A. Base Volume

The retail district will establish for each direct service station, full line jobber, and other district accounts a Base Volume, by month, equivalent to the previous calendar year's sales for the respective month.

B. Adjusted Base Volume

Market and/or trade area occurrences which significantly influence the potential volume that would normally exist if an allocation situation was not in effect may constitute justification for *increasing or decreasing* the monthly Base Volume as established by the above method A.

DIRECT SERVICE STATIONS

The following are acceptable occurrences that may permit a change in the Base Volume:

1. NTI (New To Industry)/NTS (New To Shell) & Lost Accounts
2. Dealer changes (including dealers in training)
3. Road changes
4. Station modernization or rebuilt (including in-bay carwashes installed or legally committed for installation)

The above occurrences which significantly affect the volume must have occurred prior to May 1, 1973 in order to justify increases or decreases in the allocation. Furthermore, the occurrences must be documented on an individual account basis and be substantiated by the historic sales records.

NTI/NTS, Modernization and rebuilt units which we are contractually committed to but not on stream prior to May 1, 1973 must have a Base Volume which reflects the volume contained in the approved Real Estate Proposal. NTI/NTS units which have not been committed contractually at the time of the G.A.P. implementation, will not be brought onstream during the allocation period. (Committed contractually is defined as those purchase options and or leases which we are legally obliged to consummate).

39. It is my opinion that to the extent Paragraph F requires a strictly uniform allocation of petroleum products, such an allocation cannot be "on an equitable basis." If, on the other hand, the requirement of apportioning gasoline "on an equitable basis" imposes a duty to allocate on some basis other than absolute uniformity, it is lacking in an intelligible standard. Furthermore, Paragraph F fails to specify the manner in which and the basis upon which "periods of shortages"

will be determined. In my opinion, it is therefore unclear whether the Gasoline Tax Division of the State of Maryland is to designate such periods or whether it is necessary for the Governor of Maryland or the President of the United States or the Federal Congress or the State Legislature or some federal agency to issue such a decree; also, the basis or standard for utilizing the authority and issuing such a decree is undefined.

40. In sum, it is my opinion that the Maryland legislature must have acted without a basis of understanding the retail petroleum market and the needs and interactions of the elements composing that market place. Correlatively, as a result, it is my opinion that Chapter 854 of the Laws of Maryland, as it pertains to divorcement, uniform voluntary allowances, uniform equipment rentals, and uniform apportionment of supplies, is contrary to the welfare of the people of the State of Maryland.

41. I am competent to be a witness and I have personal knowledge of the facts hereinabove stated, including knowledge through certain business records, as hereinabove described.

/s/ Walter D. Naughton

Subscribed and sworn to before me
this 4th day of September, 1975.

/s/ Mildred A. Chadwick
NOTARY PUBLIC

MILDRED A. CHADWICK
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1977

The following exhibits of plaintiffs introduced at trial have not been printed, however, they are available in the lower court's record which has been transferred to this Court:

(a) Plaintiffs' Exhibit #1: (Exxon) Thirty (30) photographs of the various types of retail service station facilities operated in Maryland by Exxon Corporation or independent dealers under the Exxon brandname.

(b) Plaintiffs' Exhibit #2(a) and #2(b): (Continental-Kayo) Photographs of the typical type of retail service station facility operated by Kayo in Maryland.

(c) Plaintiffs' Exhibit #6: (Gulf) Photographs of a Gulf company operated facility known as a "Tire-Hut".

(d) Plaintiffs' Exhibit #7(a) through 7(g): (Petroleum Marketing Corporation) Photographs of typical retail service station facilities operated in the State of Maryland by Petroleum Marketing Corporation under the brandname "Scot".

(e) Plaintiffs' Exhibit #9: (Petroleum Marketing Corporation) A "Cost Factor Changes Chart", which is a plot of costs to Commonwealth Petroleum for such items as crude oil, refinery operating costs, freight costs, taxes, etc. for the years 1969-1975.

(f) Plaintiffs' Exhibit #10(b): (Shell) Six (6) exhibits attached to and submitted with Shell's Exhibit #10(c) Affidavit of Walter D. Naughton.

(g) Plaintiffs' Exhibit #12: (Ashland) Photographs of the various types of retail service station facilities operated by Ashland.

(h) Plaintiffs' Exhibit #13 (A & B): (Ashland) Copies of graphs indicating "crude oil costs"

(1973-1974) to Ashland and "refinery runs" (1974-1975) by Ashland.

DEFENDANTS' EXHIBIT A

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
Annapolis, Maryland 21404

June 13, 1973

Honorable Louis L. Goldstein
Comptroller of the Treasury
State of Maryland
State Treasury Building
Annapolis, Maryland 21404

Dear Mr. Comptroller:

During the past several days, my office has received numerous complaints about the availability of quantities of gasoline during the current real or contrived shortage of fuel.

A number of callers have noted that certain filling stations associated with specific brands of gasoline are open 24 hours a day and have no limit on the amount of a purchase, while others have attempted to spread out their supplies by reducing the amount of gasoline that can be purchased as well as shortening the hours they are open.

I might add that there appears to be a pattern of frequency among the brands of gasoline mentioned that are available in unlimited quantities and on a 24-hour basis.

I would appreciate it very much if you would ask the Director of the Gasoline Tax Division of the Comptrol-

ler's Office to conduct a survey among filling stations to determine whether certain brands are more plentiful than others.

Specifically, I would like to know whether company owned and operated filling stations are being given larger quotas of gasoline than privately operated and independent filling stations. Also, I would like to know the number of hours company owned and operated filling stations are open for business as opposed to privately operated and independent filling stations, and the average amounts of gasoline each of these is making available to motorists on an individual basis.

I believe the citizens of Maryland are entitled to have this information so they will be able to judge for themselves the gravity of the energy shortage and the motives or reasons for its causes.

Therefore, I would appreciate the results of this survey as soon as it is completed to your satisfaction.

Sincerely,

/s/ Marvin Mandel
Governor

DEFENDANTS' EXHIBIT B

COMPTROLLER OF THE TREASURY
GASOLINE TAX DIVISION
P.O. BOX 1751
STATE TREASURY BUILDING
ANNAPOLIS, MARYLAND 21404
TELEPHONE (301) 267-5131

June 29, 1973

TO ALL RETAIL SERVICE STATION OPERATORS

The Honorable Marvin Mandel, Governor of Maryland, has requested our office to investigate the availability of gasoline in the State of Maryland.

The enclosed Questionnaire is designed to determine whether company owned and operated service stations are being given larger quotas of gasoline than privately operated and independent stations.

From the information you provide, we will also be able to determine why some service stations operate 24 hours a day when others are open for a shorter period of time.

In order to evaluate the overall impact of the shortage of gasoline on both the retail service station dealer and the ultimate consumer, we are requesting your cooperation in completing the questionnaire and returning it to our office by July 20, 1973. The

information you submit on your questionnaire will be kept confidential. Thank you for your cooperation.

With kindest regards, I am,

Cordially yours,

/s/ Louis L. Goldstein
Louis L. Goldstein,
Comptroller

LLG:bdz
Encs.

ANNAPOLIS, MARYLAND 21404

1. During period January 1, 1973 thru June 13, 1973 did you operate a retail service station? _____ yes or _____ no

   If Yes, complete the following where applicable to your operation:

   ____ Major oil company owned and operated (salary or commission agent).
   ____ Major oil company owned and leased to you.
   ____ Privately owned and leased to you by oil company or branded distributor.
   ____ Privately owned by you and operated by you.
   ____ Retail station operated under major oil company brand (accepts company credit cards).
   ____ Retail station operated under independent or private brand.

   Leased from: _____

   _____

   _____

   Brand: _____

2. Allocation:

   Has your allocation been changed during period January 1, 1973 thru June 13, 1973? _____yes or _____no

   If Yes, _____ upward or _____downward.

3. If supply was reduced, explain the formula given you for your allowance:

   _____

   _____

   _____

4. If allocation was not applied equally to each grade of gasoline, explain specific allocation to each grade. _____

   _____

   _____

5. When were you notified, by whom, and how? _____

   _____

6. Based upon your normal hours of operation as of January 1, 1973, how many hours has your station been closed due to lack of product and/or product allocation, during the period January 1, 1973 thru June 13, 1973? _____

7. List dates and amounts of any voluntary allowances or any other subsidies or financial assistance withdrawn from you. _____

   _____

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8. List name and title of person or persons that recommended any change in hours and/or days of operation _____

_____

9. What was their recommendation? _____

_____

10. Sales to your customers:

Do you limit the number of gallons purchased by a customer? ____ yes or ____ no

If Yes, complete the following:

A. Who recommended or established amount to be sold each customer?

_____

B. How many gallons per customer per purchase? _____

C. Is same amount sold to all customers? ____yes or ____no

D. If same amount not sold to all customers, explain: _____

_____

_____

11. Complete attached " Schedule A ".

RETURN BY JULY 20, 1973 TO: Comptroller of the Treasury
Gasoline Tax Division
Post Office Box 1751
Annapolis, Maryland 21404

For Assistance call Annapolis - 267-5126.

SCHEDULE A

Comptroller of the Treasury
Gasoline Tax Division
Annapolis, Maryland 21404

Increase January 1, 1973 thru June 13, 1973

	Your Cost Per Gallon*				Your Posted Price				Hours of Operation			
	Prem.	Mid-Prem.	Reg.	Econ.	Prem.	Mid-Prem.	Reg.	Econ.	Wk. Days	Sun.	Holidays	Total Gallons Sold
Jan. 1, '72												
Jan. 1, '73												
June 13, '73												

	Cost Increase Per Gallon				Increase In Posted Price				Total Gallons	
Date	Prem.	Mid-Prem.	Reg.	Econ.	Prem.	Mid-Prem.	Reg.	Econ.	Allocated	Sold
Jan. '73										
Feb. '73										
March '73										
April '73										
May '73										
June '73										

*Include Product Price and all taxes only. (Do not include rent, overrides, payoacks, etc.)

List reason your supplier gave you in reducing the amount of product supplied to you and any comment or additional information you desire to submit or make available for examination by an agent of the Comptroller's Office.

_____

_____

_____

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DEFENDANTS' EXHIBIT C

CONTROLLER OF THE TREASURY
GASOLINE TAX DIVISION
P.O. Box 1751
ANNAPOLIS, MARYLAND 21404

QUESTIONNAIRE

ALL INFORMATION REQUESTED IS TO BE REFLECTIVE OF MARYLAND ACTIVITY ONLY

1. Retail Service Station Information:

	Calendar 1971	Calendar 1972	Jan. 1, 1973 to June 13, 1973	
Number of New Stations Opened				XXXXXXXX
Number of Stations Rehabilitated by Major Renovation				XXXXXXXX
Number of New Stations Currently Under Construction	XXXXXXXX	XXXXXXXXX	XXXXXXXXXXXXXX	
Number of Stations acquired from other companies, jobbers, and individuals				XXXXXXXXX

2. Number of New stations planned for Construction during 1974_____1975_____.

3. Total Volume reflected for New Station Construction during 1974_____ 1975_____.

4. Volumes:
Please indicate the projected annual volumes contained in your Real Estate Proposals and/or earnings estimates to your General Management for all stations (as a group) by category and schedule below:

	Calendar 1971	Calendar 1972	Jan. 1, 1973 June 13, 1973	June 13, 1973 Dec. 31, 1973
New Stations Opened				XXXXXXXXXXXXXX
Existing Stations Rehabilitated by Major Renovation				XXXXXXXXXXXXXX
New Stations Planned to Open	XXXXXXXX	XXXXXXXX	XXXXXXXXXXXX	

*Indicate Real Estate or Earnings Estimate Total volumes for Stations Anticipated ready for Operation.

5. Total Number of Unbranded accounts to whom gasoline sales were made in 1972 _____. What was total volume sold to these accounts_____.

CONTROLLER OF THE TREASURY
GASOLINE TAX DIVISION
P.O. Box 1751
ANNAPOLIS, MARYLAND 21404

QUESTIONNAIRE

6. Total Number of Unbranded accounts to whom gasoline sales were made during the months of June 1973_____. What was total volume sold to these accounts?_____.

7. How many Retail Service Stations do you operate at retail, either by Salaried personnel or Commission Management Plan (total combined) as of June 13, 1973?
_____.

8. How many of above operations did you have as of midnight December 31, 1971?
_____. Midnight December 31, 1972_____.

A. Are these allocated differently from Lessee Dealers? yes_____no_____

10. How many of your branded service stations are on Full Self-Service?_____.
Partial Self-Service?_____.

11. Number of Retail Service Stations Closed and Deactivated during periods indicated:

A. January 1, 1972 thru June 30, 1972_____.
B. July 1, 1972 thru December 31, 1972_____.
C. January 1, 1973 thru June 30, 1973_____.

12. Commercial-Consumer Volume (total gallons) sold in Maryland:

	Diesel Fuel	Gasoline
A. 1971	_____	_____
B. 1972	_____	_____
C. First six (6) months, 1973	_____	_____

13. Number of contracts cancelled and/or not renewed (combined total by category) during period January 1, 1973 thru June 30, 1973:

A. Lessee Dealer_____.
B. Commercial Consumer_____.
C. Jobbers (Sell gasoline & Fuel Oil)_____.
D. Heating Oil Distributors_____.
E. Municipal or other bids not renewed_____.
F. Marinas_____.
G. Independent (unbranded and/or branded that owned or controlled their individual location)_____.

GASOLINE TAX DIVISION
P.O. Box 1751
ANNAPOLIS, MARYLAND 21404

QUESTIONNAIRE

14. Indicate schedule of allocation by month and category of account:

	Lessee Dealer	Commercial Consumer	Salary/Company Operated Ser. St.	Marinas	Jobber	Heating Oil Dis.
January 1973						
February 1973						
March 1973						
April 1973						
May 1973						
June 1973						

15. Please list Dates and Increases (per gallon) in price to your classes of trade effective between January 1, 1973 and June 30, 1973 for Gasoline, Diesel Fuel, and #2 Heating Oil:

Date of Increase	Amount per gal.	Class of Customer affected	Type of Fuel

16. During the period January 1, 1973 and June 30, 1973, have you eliminated or reduced any of the following (yes or no):

A._____Rental abatements, if so, how many?_____.

B._____Voluntary Allowances, if so, how many customers affected?_____.

C._____Subsidies such as trading stamps, if so, how many customers affected?_____.

D._____Other financial assistance (light bill, etc.), if so, how many customers affected?_____.

COMPTROLLER OF THE TREASURY
GASOLINE TAX DIVISION
P.O. Box 1751
ANNAPOLIS, MARYLAND 21404

QUESTIONNAIRE

17. Have any of your representatives recommended any change in Service Station hours of operation?_____

_____

_____.

18. Have any of your Company Salary-operated Retail Stations, operating 24 hours per day, been reduced?_____ If yes, how many?_____.

19. How many new gallons of gasoline sales have been acquired during the period of June 30, 1972 thru June 30, 1973 through the acquistion of business on toll roads, such as New Jersey Turnpike, Garden State Parkway, etc. in the combined states of Maine, Vermont, New Hampshire, New York, Pennsylvania, Maryland, and Virginia?_____. (This should be an annual or total contract committment).

Prepared by:_____

Title:_____

MUST BE RETURNED BY JULY 31, 1973

DEFENDANTS' EXHIBIT D

RESULTS AND ANALYSIS OF SERVICE STATION DEALERS QUESTIONNAIRE

Questionnaire's seeking information for the period January 1, 1973, through June 13, 1973, were sent to 4055 Service Station Dealers. Only 1407 (34.7%) expressed enough interest to even reply. Returns were received as follows:

MAJOR OIL COMPANY OWNED, LEASED TO DEALER	772
PRIVATELY OWNED, OPERATED UNDER A MAJOR BRAND	503
UNBRANDED	80
COMPANY OPERATED	52
TOTAL	1407

MAJOR OIL COMPANY OWNED, LEASED TO DEALER: Returns were received from 772 leased outlets that were allocated in the range of 70% to 106% of their prior years purchases. There were 171 outlets unrestricted insofar as allocation was concerned. A total of 93,287 hours were lost by this category with only 158 limiting sales to their customers. Wholesale price increases ranging from .9 to 5.5 cents per gallon were experienced by 188 outlets with 412 outlets increasing their pump posted prices from .8 to 6.6 cents per gallon. Temporary voluntary allowances withdrawn during this period range from .5 to 7 cents per gallon. Voluntary allowances (discounts) are extended to a

dealer in order to enable him to be more competitive in a trade area and thereby increase his volume. Prior to the "shortage" dealers were compelled by lease to maintain predetermined longer hours which include Sundays. This is a normal action designed to continue the ability of an outlet to sell more gasoline. Just prior to the alleged "shortage" many dealers were encouraged to stimulate volume through the use of glassware promotions, national football league books, and other items. Also, during the first half of this year we saw the innovation of self service, the far lower posted pump prices, by many major oil company dealer-leased outlets. This was another means to increase gasoline sales. Several dealers were forced to move from their existing locations to inferior locations, in order for the companies to rehabilitate with a larger operation and in some cases company operate the outlet. This, naturally, increases the demand for product through a rebuilt or renovated outlet. It is interesting to note that we have a written statement from one dealer in Eldersburg, Maryland, who was told by a company representative, to expect a survey form through the mail but when it comes, do not open it. The BP Company applied the smallest allocations to their dealers.

PRIVATELY OWNED, OPERATED UNDER A MAJOR BRAND: This category was the most abused and was allocated from .0% to 150% of the prior years purchases. Of the 503 reporting, 378 were forced to close or to limit sales to their customers and also experienced the withdrawal of voluntary allowances ranging from 1 cent to 1½ cents per gallon. In this category 162 experienced a wholesale price increase from .5 cents to 8.0 cents per gallon and 211 of these

outlets increased their pump posted prices from .5 to 10.0 cents per gallon. There was a high degree of activity between major oil companies in the cancellation of leases with this type operator and it is assumed that because of lease and lease back arrangements and other pricing arrangements favorable to the operator, this was done in order to channel that volume through their own controlled outlets wherein a greater profit per gallon could be achieved. In one instance, maintenance of the entire property was provided by the major oil company and this was completely eliminated in this category. BP continued to stand out in the poor treatment of this type of account. Newspapers carried several articles a few months ago in reference to the Butts BP Service Station, 8832 Belair Road, Perry Hall, Maryland. This individual had done business with his supplier (BP and their predecessors) for over 40 years and was selling 200,000 gallons a month at a discount price. In June he was allocated 168,000 gallons and BP did not renew the lease upon its expiration on June 30, 1973, pulling all pumps and equipment and refusing him any gasoline whatsoever. Greenbelt Consumer Service, Incorporated, operates 10 branded BP outlets in the suburban D.C. area. They were advised their contract was cancelled three months before its expiration date and after discussions by the supplier and Greenbelts attorney's it was decided they must live up to their obligation and supply the account for the balance of the contract period. Greenbelt Consumer Service, Incorporated, had been a branded BP chain for several years and according to its manager accounted for 20% of the BP volume in their geographic area. Here again, we can only assume action of this type is to

eliminate the "deep discount" business and rechannel it through controlled higher profit outlets. In another instance, Mr. Edward E. Green of Kingsville, Maryland, was notified that BP would no longer supply him any gasoline after September 19, 1973. This gentleman had been operating for over 60 years. BP arranged to loan Clinton Car Wash $146,000 for the construction of a Car Wash Gasoline facility in return for a 10 year lease back arrangement during 1970. The payback arrangement amounted to $1849.00 per month and was based on a volume basis. Upon being allocated only 70%, Clinton sought relief from the high payback and attempted to adjust it at least to coincide with their allocation. Clinton was told by a Mr. Taggert in a very candid way that the general concept of the BP-Sohio was to maintain only company owned stations. These are but a few specific instances which clearly indicate the trend by some major oil companies to eliminate this category of account in a premeditated manner.

UNBRANDED: Unbranded locations are also privately owned and are similar to the aforementioned category except that they post no brand identification. Of the 80 outlets reporting, only 13 were unrestricted in their allocation of product while 67 were allocated from 49% to 90% based on their purchases for the same month of the prior year. This small group of 80 outlets lost 23,942 hours of station operation with 70 of them limiting sales to their customers. Due to very small amounts allocated or being cut off completely, 39 were forced to close. Of this category 58 experienced a wholesale price increase ranging from .5 to 9.75 cents per gallon and 61 increased their pump posted prices from .5 to 10.0 cents per gallon and due to the withdrawal

of voluntary allowances, hauling allowances and the privilege extended to many by several suppliers of buying at jobber prices. These outlets were forced to raise their prices to a point where they could no longer compete with branded outlets of better facilities in their trading area. Due to the lack of appropriate Federal law, price for foreign product could go up under the existing Federal guidelines and there was no protection for this type of account.

COMPANY OPERATED: The 52 reporting outlets indicated they were either unrestricted in their purchases or allocated 100% of their needs. Only one indicated he was allocated at all. In this category 51 reported pump posted price increases ranging from 1.0 cents to 6.0 cents per gallon. No replies were received from Crown Central Petroleum Company but by observation and investigation we determined they were able to remain open 24 hours a day. During one week only, and at only one observed location, was there any effort by Crown to limit their sales and this occurred during the hours of 10:00 p.m. to 4:00 a.m. wherein they limited to a $2.00 purchase but we observed consumers being permitted to make two $2.00 purchases. Exxon owns and operates a secondary brand of outlets "Alert" and they failed to provide any detailed information for these outlets to this office. The source of supply for the "Alert" outlets is Crown Central Petroleum Company. We have no information as to hours of operation, volumes or allocations in reference to the "Alert" outlets, but rather our observations concluded the "Alert" stations continued normal hours of operation and appeared to be under no allocation program whatsoever.

Based upon the total returns received in this office, it is quite evident that company operated outlets were virtually unaffected insofar as gasoline availability was concerned.

The independent, both branded and unbranded certainly experienced the greatest difficulty in obtaining gasoline in view of the fact a total of 48 outlets were forced to close. These two categories certainly experienced the greatest cost per gallon increase.

In the major oil company owned but leased to dealer category the product availability did not significantly reduce, it did appear, however, to be redirected to different outlets. Dealers appeared to seize upon the opportunity to reduce station hours by eliminating Sundays, closing early, etc., while still selling basically the same volume of gasoline as in the previous months of the prior year.

Analysis of the returns received clearly indicated a trend to restrict, and in many cases, eliminate through contract cancellation, outlets with lower than average volumes and individuals who owned their own locations and were on a lease and lease back arrangement. These latter people usually enjoy a better arrangement than a normal dealer, for in some instances an individual will lease a location he owns to the oil company, for say $500 per month, then leases it back for $1.00 per month. In this manner, price discrimination is eliminated, the owner paid for his investment, but the oil company enjoys a lower profit per gallon, hence, redirect this volume through an owned facility and the result is, greater profit on that gallon plus a rent charge on the gallon, for the oil company.

The fact that 65.3% failed to bother to return our questionnaire further supports the above statements. It indicates either no problems at all, they like the reduced hours of operation, were just totally unaffected, or were fearful of responding for fear of reprisal by the major oil companies, or were instructed not to return the questionnnaire.

DEFENDANTS' EXHIBIT E

ANALYSIS OF MAJOR OIL COMPANIES QUESTIONNAIRES

On July 17, 1973, twenty (20) major oil companies were mailed questionnaires designed to compile the necessary data to further evaluate the request of the Honorable Marvin Mandel, Governor of Maryland, in regards to the gasoline shortage.

As of September 21, 1973, nine (9) major oil companies filed the questionnaires completely executed. Two (2) additional major oil companies filed, but refused to answer several of the questions which they considered to be proprietary and confidential. The majority of the nine (9) remaining companies indicated that they would refuse to complete and return the questionnaires.

In the calendar year 1971, nine (9) major oil companies constructed and opened forty (40) new stations. The same companies reported acquiring sixteen (16) additional stations from other companies or individuals, making a total of fifty-six (56) new service stations which required an additional 27,337,956 gallons.

In the calendar year 1972, these companies reported that they had constructed and opened thirty-seven (37) new service stations and that they had acquired, rehabilitated and opened sixteen (16) service stations that were obtained from other oil companies or individuals. The fuel commitment for these fifty-three (53) service stations amounted to 25,576,660 additional gallons.

During the first six (6) months of 1973, ten (10) new service stations were constructed and opened. Four (4) service stations were acquired from another oil company or individual, making a total of fourteen (14) stations which required 9,382,000 gallons of additional gasoline to operate.

For the 2½ year period, nine (9) major oil companies opened for business, one hundred twenty-three (123) new service stations with a gasoline requirement of approximately 62,000,000 gallons.

The survey, also, revealed that for the 2½ year period eight (8) companies rehabilitated ninety-four (94) existing service stations which undoubtedly increased the volume requirements for the same period.

During the period of June 30, 1972 thru June 30, 1973, three (3) major oil companies were successful in being awarded new contracts to supply service stations on toll roads in Maine, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Maryland and Virginia, totaling 66,780,000 gallons.

There were ninety-five (95) service stations closed or deactivated during the 2½ year period covered by the survey of which thirty-nine (39) were closed during the period of January 1, 1973 thru June 30, 1973.

During the period of January, 1973 thru June, 1973, five (5) major oil companies reported cancelling contracts to supply one (1) retail jobber, one hundred five (105) consumer accounts and sixteen (16) retail service station dealers.

During the period of January, 1973 thru June, 1973, seven (7) of the eleven (11) companies reported that they had withdrawn various types of voluntary

allowances from four hundred twenty-two (422) service stations.

Several of the major oil companies that submitted the completed reports requested that their specific data be treated as confidential marketing and trade secrets. Therefore, we are refraining from naming the companies that complied with our requests as well as those refusing to complete the questionnaires.

RETAIL SERVICE STATION ACQUISITIONS AND DEACTIVATED BY ELEVEN MAJOR OIL COMPANIES DURING THE CALENDAR YEAR 1971, 1972 AND FIRST HALF OF 1973

	NEW STATIONS	OLD STATIONS ACQUIRED FROM OTHERS	REHABILITATED	DEACTIVATED	UNDER CONSTRUCTION
Calendar Year 1971	40	16	41	22	x
Calendar Year 1972	37	16	38	34	x
First 6 months 1973	10	4	15	39	8
Total	87	36	94	95	8

ANALYSIS OF COMPARATIVE REPORT OF TAXABLE AND EXEMPT GASOLINE SALES FOR THE CALENDAR YEAR 1971, 1972, AND THE FIRST SIX MONTHS OF 1973

During the first six months of the calendar year 1973 a great deal of publicity was presented about the shortage of gasoline in the State of Maryland. We have therefore compiled a comparative report to determine the market position of each major oil company of the years 1971, 1972, and the first six months of 1973. The report reflects the percentage of growth and taxable sales for each company for the year 1972 as compared to 1971, and for the first six months of 1973 as compared to the first six months of 1972. Many reputable sources predicted that the percent of increase in taxable gasoline sales would be approximately 6% for the fiscal year June, 1973, as compared to fiscal year 1972. (See exhibit – U.S. Bureau of Mines Report).

In using a 6% increase factor for analysis in evaluating this report, we draw the following conclusions:

The Exxon Corporation sales for the first six (6) months of 1973 were 6% greater than those of the first six (6) months of 1972. The Exxon Corporation in 1971 held 18% of the Maryland market and for the first six months of 1973 maintained 18% of the market. The Exxon Corporation also allocated 100% of last year's supply to all retail service stations it supplies and increased this percentage in the month of June.

Amerada Hess Corporation taxable sales in Maryland in 1972 were 10% greater than their 1971 sales. The sales for the first six months of 1973 were 5% less than the first six months of 1972. The Amerada Hess

Corporation's share of the Maryland market was 3% for the calendar year 1972 as compared to 3% of the market for the first six months of 1973. This company operated company owned service stations in Maryland similar to those operated by the Crown Central Petroleum Corporation. A review of the Crown Central Petroleum Corporation activity in this report possibly could shed light on the decline of sales activity of Amerada Hess Corporation.

Amoco Oil Company taxable sales in Maryland in 1972 were 4% greater than those of 1971. The first six months sales for 1973 were 4% greater than the first six months sales of 1972. The Amoco Oil Company share of the market was 10% for the calendar year 1971, 1972, and the first six months of 1973. The percentage of increase in sales and share of the market indicated, on the surface, a modest but steady growth by this company. There is a strong possibility that the growth factor experienced by Crown Central Petroleum also had some effect on this company.

Ashland Oil Company Incorporated taxable sales in Maryland in 1972 were 19% greater than 1971 sales. The first six months sales for 1973 were 23% less than the first six months sales of 1972. Ashland Oil Incorporated is an independent refiner and does not operate any retail service station outlets in the State of Maryland. All of their other sales are to independent retail service stations and bulk customer deliveries. There is every reason to believe that Ashland Oil Incorporated did experience a shortage of crude oil and refined gasoline. They are in the process of negotiating with Iran to the extent of offering the Government of Iran 50% ownership of the Buffalo Refinery and a small chain of retail service stations for additional supplies of crude oil.

Atlantic Richfield taxable sales in Maryland in 1972 were down 25% from 1971 sales, and the first six months sales for 1973 were 11% greater than the first six months sales of 1972. The Atlantic Richfield Company share of the Maryland market was 3% for 1971, 1972, and the first six months of 1973. The Atlantic Richfield Company did experience an extensive employee strike in the calendar year 1972 which contributed to the decline of sales as compared to 1971. The 11% increase for first six months was far better than the predicted national average.

BP Oil Corporation taxable sales in Maryland in 1972 were 2% greater than 1971 sales. The first six months sales for 1973 were 6% greater than the first six months of 1972. The BP Oil Corporation share of the Maryland market was 7% in 1971, 1972, and the first six months of 1973. During the first six months of 1973, the retail service station operators branded as BP stations in Maryland experienced considerable difficulty in obtaining gasoline and those individuals owning the retail service station property, were in some cases, completely cut-off from supply, and contracts were cancelled. This oil company compiled the worst record of any oil company in the State of Maryland for maintaining its responsibility to the independent businessmen marketing their brand. During the six month period, they managed to meet the predicted percentage of increase which was the same percentage of increase that the Exxon Corporation maintained.

Chevron Oil Company taxable sales in Maryland in 1972 were 28% greater than 1971 sales. The first six months sales in 1973 were 133% greater than the first six months of 1972. The Chevron Oil Company share of the Maryland market was less than 1% of the sales of calendar year 1971, 1972, and 1973.

Cities Service Oil Company taxable sales in Maryland in 1972 were down 3% from 1971 sales. The first six months sales for 1973 were 6% less than the first six months sales of 1972. Cities Service Oil Company's share of the Maryland market was 4% of the calendar year 1971, 1972, and 3% of the first six months of 1973. During the last quarter of 1972, the Cities Service Oil Company changed its marketing policy in that by discontinuing sales to consumer accounts other than the retail service stations. This undoubtedly accounts for the decline in sales.

Continental Oil Company taxable sales in Maryland in 1972 were down 35% from 1971 sales. The first six months sales for 1973 were 25% greater than the first six months sales of 1972. The Continental Oil Company share of the Maryland market for the calendar year 1971 was 2% and 1% for the calendar year 1972 and the first six months of 1973. In 1971, the Continental Oil Company had been supplying the Petroleum Marketing Corporation gasoline for the Scott brand retail service stations and petroleum marketing bulk customers. At present, the Petroleum Marketing Corporation is being supplied by Commonwealth Oil and importing gasoline from Puerto Rico.

Crown Central Petroleum Corporation taxable sales in Maryland in 1972 were 32% greater than 1971 sales. The first six months sales for 1973 were 30% greater than the first six months sales of 1972. The Crown Central Petroleum Corporation share of the Maryland market was 3% of the calendar year 1971 and 4% of the calendar year 1972 and of the first six months of 1973. In 1972 The Crown Central Petroleum Corporation changed its marketing program by discontinuing service stations with repair bays, and starting a program

of high volume sales throughout the State thru "pumper" type stations. The Crown Central Petroleum Corporation owns and operates one refinery which operated 65% of capacity during the alleged "shortage", as a result of a lack of crude. With their exchange agreements with Coastal States Refining Company, they were able to maintain an adequate supply to all their locations in Maryland which enables these retail service stations to remain open 24 hours a day, 7 days a week.

Getty Oil Company Inc. taxable sales in Maryland in 1972 were 11% greater than 1971 sales. The first six months sales for 1973 were 3% greater than the first six months sales of 1972. Getty Oil Company Inc. share of the market was 1% for the calendar year of 1971 and 1972, and fell slightly below 1% for the first six months of 1973. The Getty Oil Company retails primarily to bulk customers for very limited retail outlet sales.

Gulf Oil Corporation taxable sales in Maryland in 1972 were 15% greater than 1971 sales. The first six months sales for 1973 were 11% greater than for the first six months of 1972. The Gulf Oil Corporation held 7% of the market in 1971, and in 1972 and the first six months of 1973 held 8%.

Mobil Oil Corporation taxable sales in Maryland in 1972 were 8% greater than 1971 sales. The first six months sales for 1973 were 7% greater than the first six months sales of 1972. Mobil Oil Corporation maintained 3% of the Maryland market of the calendar years of 1971, 1972, and the first six months of 1973.

Petroleum Marketing Corporation taxable sales in Maryland in 1972 were 84% greater than 1971 sales. This sizable increase was due to the fact that in prior

years, Petroleum Marketing obtained its gasoline from the Continental Oil Company which collected the taxes due. In 1972, The Petroleum Marketing Corporation began obtaining its gasoline from the Commonwealth Oil Company located in Puerto Rico. The first six months sales for 1973 were 8% greater than the first six months sales of 1972. The Petroleum Marketing Corporation share of the market in 1971 was 2%. It increased to 3% in 1972 and held the 3% for the first six months of 1973. Petroleum Marketing Corporation owns and operates the Scott brand retail service stations in the State of Maryland. They also supply numerous individual retail service stations in Maryland.

Phillips Petroleum Company taxable sales in Maryland in 1972 were 16% greater than in 1971. The first six months sales for 1973 were 16% less than the first six months sales of 1972. The Phillips Petroleum Company share of the market remained at 1% for the calendar years of 1971, 1972, and for the first six months of 1973. The Phillips Petroleum Company announced a general withdrawal program from the Northeastern market approximately two years ago, and have successfully withdrawn from all states north of Pennsylvania.

Shell Oil Company taxable sales in Maryland in 1972 were 4% greater than in 1971. The first six months sales for 1973 were 13% greater than in the first six months of 1972. In 1971 the Shell Oil Company had 9% of the Maryland market. In the calendar year 1972, they dropped to 8% of the market, and in the first six months of 1973 had 9% of the Maryland market.

Southern States Cooperative Inc. taxable sales in Maryland in 1972 were 7% greater than in 1971. The first six months sales for 1973 were 13% greater than in

the first six months of 1972. Southern States Cooperative Inc. has consistently held 1% of the Maryland market for the calendar years 1971, 1972, and the first six months of 1973.

Sun Oil Company of Pennsylvania taxable sales in Maryland in 1972 were 4% greater than in 1971. The first six months sales for 1973 were one-fourth of one percent greater than those of 1972. The Sun Oil Company of Pennsylvania has consistently held 4% of the Maryland market for the calendar years 1971, 1972, and for the first six months of 1973.

Tenneco Oil Company taxable sales in Maryland in 1972 were down 6% as compared to 1971. The first six months sales of 1973 were 17% less than the first six months sales of 1972. Tenneco Oil Company has consistently held 1% of the Maryland market of the calendar years 1971, 1972, and the first six months of 1973. Some of Tenneco's decline can be attributed to the Cities Service Oil company program of discontinuing to supply all commercial accounts except retail service stations. The Cities Service Oil Company and the Tenneco Oil Company maintain a terminal agreement and exchange agreements for marketing petroleum products in Maryland.

Texaco Incorporated taxable sales in Maryland in 1972 were 9% greater than 1971 sales. The first six months sales for 1973 were 5% greater than for the first six months of 1972. Texaco has consistently held 6% of the Maryland market for the calendar years 1971, 1972, and the first six months of 1973.

Union Oil of California taxable sales in Maryland in 1972 were down 24% from 1971 sales. The first six months sales for 1973 were 9% greater than the first six

months sales of 1972. The Union Oil Company of California has consistently held less than 1% of the Maryland market of the calendar years 1971, 1972, and for the first six months of 1973.

Out of the twelve unbranded independent dealers that controlled 2% of the Maryland market, the Royal Oil Corporation had a 55 percent increase for the first six months of 1973 over the same period in 1972. This increase was due to Cities Service Oil Company cancellation of bulk consumer accounts that were assigned to Royal Oil Corporation. The Royal Oil Corporation gasoline supplies came from Continental Oil Company, Coastal States Oil Company, and Cities Service Oil Company.

Eight other unbranded independent dealers' sales increased by 5% or more during the first six months of 1973. Three unbranded dealers' sales declined from 7% to 22% during the first six months of 1973.

In summary for the calendar year 1972, 14 major oil companies accounted for 85% of the total taxable gasoline sales in Maryland. For the first six months of 1973, the same 14 companies accounted for 84% of the total taxable sales in Maryland.

Eight companies indicated increases of 6% or more, ranging from 6% to 30%. Three companies reflecting a less than 6% increase did show increases ranging from one quarter of one percent to 5%. The three companies indicating losses were Amerada Hess with a 5% loss, Ashland Oil Company with a 25% loss and Cities Service with a 6% loss: however, Ashland operates no retail outlets in the State of Maryland, but rather sells to independent retail service stations and bulk customers. The Cities Service performance can be reflected in

the fact they completely eliminated all commercial consumer business during the last quarter of 1972.

With the high degree of Crown Central Petroleum (30% increase) activity in the field of "volume" outlets, there were many locations rehabilitated or constructed in the immediate proximity of Hess outlets and did tend to explain the small loss experienced by Amerada Hess.

Considering the number of new outlets constructed and those that were completely rehabilitated over the past 2 to 3 years, it would appear that any "shortage" would have to be pinpointed to specific locations rather than to a branded company as a whole.

Evidence reflected by the questionnaire returned by service station dealers clearly indicated inequities insofar as an allocation program was concerned. In essence, gasoline was diverted from the older poor producing outlets and channeled into the "new investment" outlets. Land and buildings for the normal three bay service station cost approximately $250,000. The normal yardstick in the industry is three gallons per $1.00 of investment. Thus, any new or completely renovated outlet places a tremendous drain on existing supply.

A cursory examination of the construction records made available to us for Montgomery, Baltimore and Anne Arundel counties indicated 49 new or major renovations took place in those three counties alone. Using the rule of thumb of 3 gallons per $1.00 of investment and the average cost of $250,000 per outlet we can see that an additional gasoline commitment was placed upon the system amounting to 36,650,000 gallons, by the companies involved.

Members of the industry have stood before Federal and State officials and stated they had predicted this shortage for over five years, yet we see continued construction activity increasing the demand for gasoline within our state.

Exxon Oil Company, Incorporated, operating service stations within our state, recently acquired all service stations on the New Jersey turnpike, (*new business*) amounting to approximately 50,000,000 gallons annually and maintained a 6% increase in sales in Maryland during the period of shortage. They also announced increases in allocation in June and July.

Approximately 100 field investigations were made as a direct result of statements or invitations on the Service Station Dealer questionnaire. It was clearly evident that many individuals that owned or operated their own facilities were having their contracts cancelled or permitted to expire without any apparent reason.

The conclusion *we* drew is that this action was taken to obtain product to be channeled to new or other outlets.

COMPARATIVE REPORT OF PERCENTAGE OF INCREASE OR DECREASE IN TAXABLE GASOLINE SALES FOR CALENDAR YEAR 1971-1972 AND FIRST SIX MONTHS OF 1972-1973

	Percent of Taxable Sales 1971-72	Percent of Taxable Sales 6 Months 1972-73
Exxon Corporation	1%	6%
Amoco Oil Company	4%	4%
Shell Oil Company	4%	13%
Gulf Oil Corporation	15%	11%
BP Oil Corporation	2%	6%
Texaco, Incorporated	9%	5%
Sun Oil Co. of Pennsylvania	4%	.003%
Cities Service Oil Co.	- 3%	- 6%
Crown Central Petroleum Corp.	32%	30%
Ashland Oil, Inc.	19%	- 23%
Amerada Hess Corp.	10%	- 5%
Atlantic Richfield Company	- 25%	11%
Mobil Oil Corporation	8%	7%
Petroleum Marketing Corp.	84%	8%
Continental Oil Company	- 35%	25%
Phillips Petroleum Corp.	16%	- 16%
Southern States Coop., Inc.	7%	13%
Tenneco Oil Co.	- 6%	- 17%
Getty Oil Corporation	11%	3%

MAJOR OIL COMPANY PERCENTAGE OF THE MARYLAND MARKET OF TAXABLE GASOLINE SALES

	Percent of Market Calendar 1971	Percent of Market Calendar 1972	Percent of Market 1st 6 Months 1973
Exxon Corporation	18%	17%	18%
Amoco Oil Company	10%	10%	10%
Shell Oil Company	9%	8%	9%
Gulf Oil Corporation	7%	8%	8%
BP Oil Corporation	7%	7%	7%
Texaco, Incorporated	6%	6%	6%
Sun Oil Co. of Pennsylvania	4%	4%	4%
Cities Service Oil Co.	4%	4%	3%
Crown Central Petroleum Corp.	3%	4%	4%
Ashland Oil, Inc.	3%	4%	3%
Amerada Hess Corp.	3%	4%	3%
Atlantic Richfield Company	3%	3%	3%
Mobil Oil Corporation	3%	3%	3%
Petroleum Marketing Corp.	2%	3%	3%
Continental Oil Company	2%	1%	1%
Phillips Petroleum Corp.	1%	1%	1%
Southern States Coop., Inc.	1%	1%	1%
Tenneco Oil Co.	1%	1%	1%
Getty Oil Corporation	1%	1%	less than 1%
	88%		91%

2 major companies share less than 1%

96 branded independent dealers share was 8%

12 independent unbranded dealers share was 2%

DEFENDANTS' EXHIBIT F

A BILL ENTITLED

AN ACT to repeal and re-enact with amendments, Section 157E of Article 56 of the Annotated Code of Maryland (1972 Replacement Volume), title "Licenses," subtitle "Motor Vehicle Fuel Tax," to prohibit producers, refiners, and wholesalers of petroleum products from operating retail service stations and regulating voluntary allowances and rental agreements.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 157E of Article 56 of the Annotated Code of Maryland (1972 Replacement Volume), title "Licenses," subtitle "Motor Vehicle Fuel Tax," be and is hereby repealed and re-enacted, with amendments, to read as follows:

§157E. Declaration or statement by wholesalers, refiners, manufacturers, jobbers and dealers.

(A) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. All motor fuel wholesalers, diesel fuel sellers, heating oil distributors, manufacturers, refiners, jobbers and retail service station dealer before selling or offering for sale any gasoline, other motor vehicle fuels, or special fuels under whatever name designated for power and heating purposes shall file with the Comptroller of the Treasury a declaration or statement that they desire to sell such products in this State and shall furnish the name, brand or trademark of the products which they desire to sell together with the name and address of the supplier thereof and that all such products are in

conformity with the specifications established by the Comptroller of the Treasury, as purchased from the supplier and he will make no alteration to any such product received from the supplier.

(B) AFTER JULY 1, 1974, NO PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL OPEN AND OPERATE WITH COMPANY PERSONNEL, A RETAIL SERVICE STATION UNDER A MAJOR BRAND, SECONDARY OR UNBRANDED STATION.

(C) AFTER JULY 1, 1975, NO PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL OPERATE ANY CLASS OF RETAIL SERVICE STATION IN THE STATE OF MARYLAND.

(D) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL EXTEND ALL VOLUNTARY ALLOWANCES UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(E) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL APPLY ALL EQUIPMENT RENTALS UNIFORMLY TO ALL RETAIL SERVICE STATIONS DEALERS SUPPLIED.

(F) EVERY PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL APPORTION UNIFORMLY ALL GASOLINE AND SPECIAL FUELS TO ALL RETAIL SERVICE STATION DEALERS DURING PERIODS OF SHORTAGES.

DEFENDANTS' EXHIBIT G

January 7, 1974

Honorable Marvin Mandel
Governor of Maryland
State House
Annapolis, Maryland 21404

Dear Marvin:

I am enclosing two (2) Bills which I would like to have introduced in this Session of the General Assembly.

The first Bill would prohibit producers, refiners, and wholesalers of petroleum products from operating retail service stations and would regulate voluntary allowances and rental agreements.

The second Bill would prohibit giveaways by dealers, sellers, and retail service station operators.

As you will recall, I have discussed these Bills with you on several occasions and I sent copies of them to you on September 13, 1973.

If you should have any questions, I will be free to discuss this with you further at any time.

With kindest regards and best wishes, I am,

Cordially yours,

Louis L. Goldstein

LLG:bdz
Encs.
cc: Mr. Alan Wilner

DEFENDANTS' EXHIBIT H

SENATE OF MARYLAND
No. 465

By: Senator Pine (Departmental)
Introduced and read first time: January 31, 1974.
Assigned to: Economic Affairs

A BILL ENTITLED

AN ACT concerning

Licenses – Retail Service Stations

FOR the purpose of prohibiting producers, refiners, and wholesalers of petroleum products from operating retail service stations and regulating voluntary allowances and rental agreements.

BY repealing and re-enacting, with amendments,

Article 56 – Licenses
Section 157E
Annotated Code of Maryland
(1972 Replacement Volume and 1973 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 157E of Article 56 – Licenses, of the Annotated Code of Maryland (1972 Replacement Volume and 1973 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article 56 – Licenses

157E.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Numerals at right identify computer units of text. Slashes indicate the beginning of a computer unit.

(A) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. All motor fuel wholesalers, diesel fuel sellers, heating oil distributors, manufacturers, refiners, jobbers and retail service station dealer before selling or offering for sale any gasoline; other motor vehicle fuels, or special fuels under whatever name designated for power and heating purposes shall file with the Comptroller of the Treasury a declaration or statement that they desire to sell such products in this State and shall furnish the name, brand or trademark of the products which they desire to sell together with the name and address of the supplier thereof and that all such products are in conformity with the specifications established by the Comptroller of the Treasury, as purchased from the supplier and he will make no alteration to any such product received from the supplier.

(B) AFTER JULY 1, 1974, NO PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL OPEN AND OPERATE WITH COMPANY PERSONNEL, A RETAIL SERVICE STATION UNDER A MAJOR BRAND, SECONDARY OR UNBRANDED STATION.

(C) AFTER JULY 1, 1975, NO PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL OPERATE ANY CLASS OF RETAIL SERVICE STATION IN THE STATE OF MARYLAND.

(D) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL EXTEND ALL VOLUNTARY ALLOWANCES UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(E) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL APPLY ALL EQUIPMENT RENTALS UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(F) EVERY PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL APPORTION UNIFORMLY ALL GASOLINE AND SPECIAL FUELS TO ALL RETAIL SERVICE STATION DEALERS DURING PERIODS OF SHORTAGES ON AN EQUITABLE BASIS, AND SHALL NOT DISCRIMINATE AMONG THE DEALERS IN THEIR ALLOTMENTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.

DEFENDANTS' EXHIBIT I

HOUSE OF DELEGATES
No. 918

By: Delegate Bonvegna
Introduced and read first time: February 18, 1974.
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Licenses – Retail Service Stations

FOR the purpose of prohibiting producers, refiners, and wholesalers of petroleum products from operating

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Numerals at right identify computer units of text. Slashes indicate the beginning of a computer unit.

retail service stations and regulating voluntary allowances and rental agreements.

BY repealing and re-enacting, with amendments,

Article 56 - Licenses
Section 157E
Annotated Code of Maryland
(1972 Replacement Volume and 1973 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 157E of Article 56 – Licenses, of the Annotated Code of Maryland (1972 Replacement Volume and 1973 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article 56 – Licenses

157E.

(A) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. All motor fuel wholesalers, diesel fuel sellers, heating oil distributors, manufacturers, refiners, jobbers and retail service station dealer before selling or offering for sale any gasoline; other motor vehicle fuels, or special fuels under whatever name designated for power and heating purposes shall file with the Comptroller of the Treasury a declaration or statement that they desire to sell such products in this State and shall furnish the name, brand or trademark of the products which they desire to sell together with the name and address of the supplier thereof and that all such products are in conformity with the specifications established by the Comptroller of the Treasury, as purchased from the supplier and he will make no alteration to any such product received from the supplier.

(B) AFTER JULY 1, 1974, NO PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRO-

DUCTS SHALL OPEN AND OPERATE WITH COMPANY PERSONNEL, A RETAIL SERVICE STATION UNDER A MAJOR BRAND, SECONDARY OR UNBRANDED STATION.

(C) AFTER JULY 1, 1975, NO PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL OPERATE ANY CLASS OF RETAIL SERVICE STATION IN THE STATE OF MARYLAND.

(D) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL EXTEND ALL VOLUNTARY ALLOWANCES UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(E) EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATION DEALERS SHALL APPLY ALI EQUIPMENT RENTALS UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS SUPPLIED.

(F) EVERY PRODUCER, REFINER OR WHOLESALER OF PETROLEUM PRODUCTS SHALL APPORTION UNIFORMLY ALL GASOLINE AND SPECIAL FUELS TO ALL RETAIL SERVICE STATION DEALERS DURING PERIODS OF SHORTAGES ON AN EQUITABLE BASIS, AND SHALL NOT DISCRIMINATE AMONG THE DEALERS IN THEIR ALLOTMENTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.

DEFENDANTS' EXHIBIT K-1

STATEMENT OF JAMES E. GRADY
PUBLIC AFFAIRS MANAGER, EXXON COMPANY,
U.S.A., EASTERN REGION
BEFORE SENATE ECONOMIC AFFAIRS COMMITTEE
FEBRUARY 20, 1974

Senate Bill 465
Major Oil Companies Being Prohibited From Operating
Retail Service Stations in Maryland

Mr. Chairman, gentlemen, I would like to take about five minutes to explain why Exxon operates a small percentage of their stations on a direct basis. I'll then spend a similar amount of time on the sections of SB-465 pertaining to allocations, promotions and price assistance. I'll close my prepared remarks with a brief reference to the long range effects that this bill could have on the mobility and economy of the citizens of this state.

DIVORCEMENT

For many years, Exxon's Retail Store Chain has included some stores operated by company employees, based on the belief that a diversity of markets and customers as well as the obligations imposed by federal, state and local regulatory agencies indicate that Exxon can best serve its customers using a mixture of different types of stores and marketing methods.

Legislation which would restrict the ability of a corporation to efficiently serve its customers is drastic

and inconsistent with the public welfare. In order for such legislation to be necessary, there would have to be serious widespread abuses in the marketplace and Exxon knows of no such occurrences. Certainly appropriate action could be taken under existing laws to remedy any isolated cases of abuse.

There are many sound business reasons why Exxon operates part of its store chain on a direct basis. *First,* stores are company operated to satisfy contractual agreements with various regulatory agencies. As an illustration, Exxon's agreement with the Maryland Highway Administration on J.F.K. Memorial Highway specifies that certain operating standards (24-hour service, road service and patrols) be maintained. Since we would have no legal control over a dealer operation, Company operation ensures that Exxon can and does meet these contractual requirements. This bill would absolve one contract with the state three years before its expiration date. *Second,* some stations are company operated on a temporary basis. In this instance, Exxon elects to operate the store with salary employees rather than close it when a dealer dies, or otherwise leaves unexpectedly. This approach is quite beneficial to the customer, because it permits him to continue enjoying the convenient use of a particular location. It is also beneficial to the incoming dealer since it assures him of customer continuity. Further, the incoming dealer may elect to attend the company's six-week service station management training course, thus enhancing his chances for success, if he knows the store can be company operated during this period. Last year we obliged dealers 9 times in this manner here in Maryland. Presently we are operating 3 on a temporary basis. *Third,* stores are sometimes company operated because

such operation permits Exxon to test and evaluate merchandising techniques, operating procedures, financial control systems, and equipment, as well as train retailers and sales personnel. Much of what is learned at company-operated stores, in terms of operating methods and management techniques, is then passed along to the independent dealer business man in the form of counseling to assist him in operating his business more profitably. *Fourth,* innovative stores, using new marketing concepts are often operated by the company. These include car care centers, car washes, and self-serve units. Exxon operates these stores on a direct basis because of the relatively high initial investment (in many cases in excess of $500,000); the complex nature of store operation (car care centers); the need to ensure that high-cost equipment is safely operated and efficiently maintained (car washes). *Fifth,* Exxon uses the direct method of operation in some instances because it is the most efficient method of serving our customers. Self-service stores provide an excellent illustration of this point. In most cases only one employee per shift is required to staff a normal sized self-service store. Since these people are company employees, they can be supervised by one field representative who moves about the marketplace overseeing operations, and performing the administrative and management activities for several stores. Obviously, this type of efficiency manifests itself in reduced prices to the consumer. It is unlikely that Exxon would invest in costly complex facilities designed to meet specific customer demand, such as a car wash, without the assurance that these stores would be operated under the direct supervision of company employees.

Exxon believes that company operation of selected stores has various advantages to the customer, to

employees who work at these stores and to Exxon's independent dealer businessmen throughout the country. For example, company-operated stores are monitored by a retail store supervisor who evaluates store appearance, operating hours and customer service to improve performance where required. Working with the manager, the supervisor ensures that the store is adequately stocked with a full range of products and equipped to provide the services for which the facility was designed. All of these efforts are aimed at benefitting the consumer.

Sixth, company-operated stores are also used as training schools. Employees who work or attend classes there have an opportunity to learn the business of petroleum retailing. This experience may qualify them to operate their own service station at a future date or go on to a professional career with Exxon. This has been particularly valuable for minorities. 15 have left our stores in the recent past for their own station or careers with the company right here in Maryland. Nearly 50 are presently being trained.

Company operations also have advantages for existing dealers. As mentioned above, many dealers learned petroleum retailing first as an employee and then as an assistant manager or manager of a company-operated store. With this experience, they were able to secure a dealer station, often borrowing the required investment based on their experience as a company store employee or manager. Also, as previously noted, many systems, procedures and programs which help increase dealer profits were first introduced and tested at company operated stores.

ALLOCATIONS

Charges are often made that company operations permit major oil companies to inequitably distribute products during tight supply, systematically remove dealers when desired, perpetuate give-away programs and control prices. Exxon believes these charges are unfounded.

Our company's policy during tight supply is one of fairly allocating our available product to retail outlets it operates and to those operated by independent dealers. To do this, we have applied the identical criteria to such outlets whether company or dealer operated. Allocations are based on sales history. The method and procedures used to determine product quantities available for all stores during periods of tight supply are identical. If, in fact, specific companies have failed to allocate products fairly to their customers during shortages, corrective action should be taken against those companies at fault rather than all petroleum companies.

PROMOTIONS

Exxon has always recognized the independent dealers right to participate or not in promotions offered at company stores. This is evidenced by the fact that traditionally 20-30% of our dealers elect not to participate in various company-sponsored promotions. As in any other business, competition in the marketplace fosters new and innovative methods of merchandising. Exxon attempts to provide the best merchandising we can for our company stores and offer the same

to our dealers for their operations. Ultimate decisions concerning participation, however, remain with the dealer. Passage of the proposed legislation would prevent those dealers who wish to promote their business from doing so, thus casting doubt on the fairness or desirability of such legislation from the dealer's viewpoint. As far as protecting a dealer from undue supplier pressure to participate in a merchandising program, this legislature accomplished that last spring when you passed the Maryland Gasoline Products Marketing Act.

But even more important today, dealers are being allocated on gasoline and must look elsewhere to make up the loss of income resulting from less gallonage sales. The most appropriate area of additional income is sales of tires, batteries, service and their automotive sales. It would be unthinkable to prevent them from promoting these products without also legislating against the chain stores and automotive outlets with whom they are in competition.

PRICE ASSISTANCE

Allegations that company operations are used as a method of controlling prices and that price assistance is not equitably offered to all retailers are erroneous. Under current regulations, ceiling prices are set by the Cost of Living Council. In the period which preceded federal price control, Exxon set its prices for gasoline sold at retail, as well as all other levels of the marketplace, in response to market forces at work in each individual market. Exxon has never attempted to use its retail outlets to control the retail prices charged

by its dealers. Pricing decisions at dealer-operated stores are made by the dealer based on his evaluation of competitive forces in the marketplace. The fact that dealers do make their own pricing decisions is supported by the relatively wide range of prices which may be charged by Exxon dealers in a given market at any particular point in time. For example, a study of Exxon dealers made on December 12, 1973 in Maryland reflected that their retail prices for regular grade gasoline ranged from 40.9 to 45.9 with no more than 48% at any one posted price, despite the fact that they paid a common wholesale price for the product.

Exxon's price assistance plan for dealers and price administration procedures at company-operated stores have been fairly and uniformly applied based on competitive conditions in the marketplace. Suggestions that legislation be enacted which would require that companies extend price support offered in one geographic trading area, to a whole state constitutes local government price regulation and is contrary to the system of free competition fostered by the Anti-Trust laws. Further, this type of price regulation can result in consumers paying higher prices for products, over a given time period, or to a situation where consumers in one part of the state subsidize consumers in another location. Finally, this legislation is clearly not in the best interest of service station dealers because the potential economic liability of a statewide price reduction could result in supplier reluctance to offer assistance in cases where only a few dealers require such support to meet competitive conditions. For example, if two or three of our dealers in the extreme western portion of the state could prove serious price competition from sources originating in Pennsylvania or

West Virginia, we could currently justify a discount to keep these dealers in business during the price war. But, if this legislature would require us to give the same discount to all 570 Exxon stations in the state, I'm afraid these Garrett or Allegheny dealers would have to survive as best they could – if they could. This is strictly hypothetical. We could be talking about dealers in Montgomery or Prince Georges Counties in identical situations.

In summary, charges that company operations promote inequitable product allocation, dealer lease cancellation, perpetrate give-away programs and are used as a method of controlling prices are simply unfounded. Certainly, existing laws provide excellent remedies in the limited instances where such abuses might occur. Additionally, direct store operation, in many cases, provides the most efficient, least costly method of satisfying customer demand. Therefore, Exxon believes the proposed legislation is unneeded and totally anticonsumer for you would be taking the unprecedented step of removing by legislation a choice that belongs to the Maryland motorist, as well as removing vigorous competitors from the marketplace.

We also believe that by passing this bill, the General Assembly would be placing itself in the unenviable position of having to pass a whole series of bills – or delegate unprecedented powers to the Comptroller – to fix by regulation what you are removing by restricting competition. That is, convenience for the Maryland motorist in days and hours of operation, standards of service and cleanliness, complaint handling and customer satisfaction.

Finally, this legislation closes its eyes to the evolution currently taking place in gasoline retailing.

The nation is adopting a new conservation ethic, smaller cars, car pooling, more efficient driving patterns.

The dealer association has claimed that 231 dealers have gone out of business due to the energy shortage and 500 more are expected to fold by the end of February. We don't agree with these numbers, but if a trend does develop, we should not be prevented from keeping certain of these outlets open on a salary basis where the public is dependent on them.

The development and introduction into the marketplace of new synthetic fuels as the finite supply of liquid petroleum grows more scarce, requires more rather than less flexibility in order to secure the future needs of Maryland.

Our concern, our investments, our planning, are motivated by long range considerations. We were in the Maryland market at the turn of this century. We hope to be in this market at the turn of the next century and those that follow. We simply ask you to consider these future problems as well before taking action that could place Maryland at a serious disadvantage with relation to surrounding states when it comes to energy.

Other commodities sold through dual distribution (dealer and direct).

Automotive supplies (tires, mufflers, etc.)
Appliances (TV)
Business machines and forms
Building materials
Books and magazines
Fencing, tanks and other steel products
Fertilizer
Furniture
Glass

Hearing Aids
Heating oil and equipment
Ice cream
Insurance
Insulation
Jewelry
Lawn mowers and tractors
Paint
Pianos and Organs
Suits and dresses
Shoes
Silverware
and, Bibles

DEFENDANTS' EXHIBIT K-2

STATEMENT OF JAMES E. GRADY
PUBLIC AFFAIRS MANAGER, EXXON COMPANY,
U.S.A., EASTERN REGION
BEFORE HOUSE ECONOMIC MATTERS COMMITTEE
MARCH 7, 1974

HOUSE BILL 918
Major Oil Companies Being Prohibited From Operating
Retail Service Stations in Maryland

Mr. Chairman, gentlemen, I would like to take about five minutes to explain why Exxon operates a small percentage of their stations on a direct basis. Then a shorter statement on the sections of HB-918 pertaining to allocations and price assistance. I'll close my

prepared remarks with a brief reference to the long range effects that this bill could have on the mobility and economy of the citizens of this state.

DIVORCEMENT

For many years, Exxon's Retail Store Chain has included about 5 to 10% of their stores operated by Company employees, based on the belief that a diversity of markets and customers as well as the obligations imposed by federal, state and local regulatory agencies indicate that Exxon can best serve its customers using a mixture of different types of stores and marketing methods.

Legislation which would restrict the ability of a corporation to efficiently serve its customers is drastic and inconsistent with the consumer's welfare. In order for such legislation to be necessary, there would have to be serious widespread abuses in the marketplace and Exxon knows of no such occurrences. Certainly appropriate action could be taken under existing laws to remedy any isolated cases of abuse.

There are six basic business reasons why Exxon operates part of its store chain on a direct basis. *First*, stores are Company operated to satisfy contractual agreements with various regulatory agencies. As an illustration, Exxon's agreement with the Maryland Highway Administration on J.F.K. Memorial Highway specifies that certain operating standards (24-hour service, road service and patrols) be maintained. Since we would have no legal control over a dealer operation, Company operation ensures that Exxon can and does meet these contractual requirements. This bill would

absolve our contract with the State three years before its expiration date. *Second,* some stations are Company operated on a temporary basis. In this instance Exxon elects to operate the store with salary employees rather than close it when a dealer dies, or otherwise leaves unexpectedly. This approach is quite beneficial to the customer, because it permits him to continue enjoying the convenient use of a particular location. It is also beneficial to the incoming dealer since it assures him of customer continuity. Last year we obliged dealers 9 times in this manner here in Maryland. Presently we are operating 2 on a temporary basis. If not – under FEO – gallonage would be lost to state. *Third,* stores are sometimes Company operated because such operations permits Exxon to test and evaluate merchandising techniques, operating procedures, financial control systems, and equipment. All of what is learned at Company-operated stores, in terms of operating methods and management techniques, is then passed along to the independent dealer businessman in the form of counseling to assist him in operating his business more profitably. *Fourth,* innovative stores, using new marketing concepts are often operated by the Company. These include car care centers, car washes, and self-serve units. Exxon operates these stores on a direct basis because of the relatively high initial investment (in most cases in excess of $500,000); the complex nature of store operation (car care centers); and the need to ensure that high-cost equipment is safely operated and efficiently maintained (car washes). *Fifth,* Exxon uses the direct method of operation in some instances because it is the most efficient method of serving our customers. Self-service stores provide an excellent illustration of this point. In most cases only one employee per shift is required to staff a normal

sized self-service store. Since these people are Company employees, they can be supervised by one field representative who moves about the marketplace overseeing operations, and performing the administrative and management activities for several stores. Obviously, this type of efficiency manifests itself in reduced prices to the consumer.

Sixth, Company-operated stores are also used as training schools. Employees and Dealers who work or attend classes there have an opportunity to learn the business of petroleum retailing. This experience may qualify them to operate their own service station at a future date or go on to a professional career with Exxon. This has been particularly valuable for minorities. 15 have left our stores in the recent past for their own station; or professional careers with the Company right here in Maryland. Several dozen are presently being trained and there is no other legal way to accommodate them.

ALLOCATIONS

Charges are often made that Company operations permit major oil companies to inequitably distribute products during tight supply, systematically remove dealers when desired, perpetuate give-away programs and control prices. Exxon believes these charges are completely unfounded.

Our Company's policy during tight supply is one of fairly allocating our available product to all retail outlets. To do this, we have applied the identical criteria to such outlets whether Company or dealer operated. Allocations are based on sales history. The

method and procedures used to determine product quantities available for all stores during periods of tight supply are identical. If, in fact, specific companies have failed to allocate products fairly to their customers during shortages, corrective action should be taken against those companies at fault rather than all petroleum companies.

PRICE ASSISTANCE

Allegations that Company operations are used as a method of controlling prices and that price assistance is not equitably offered to all retailers are erroneous. In the period which preceded federal price control, Exxon set its prices for gasoline sold at retail, as well as all other levels of the marketplace, in response to market forces at work in each individual market. Exxon has never attempted to use its retail outlets to control the retail prices charged by its dealers. Pricing decisions at dealer-operated stores are made by the dealer alone. The fact that dealers do make their own pricing decisions is supported by the relatively wide range of prices which may be charged. For example, a study of Exxon dealers made on December 12, 1973 in Maryland reflected that their retail prices for regular grade gasoline ranged from 40.9 to 45.9 with no more than 48% at any one posted price, despite the fact that they paid a common wholesale price for the product.

Exxon's price assistance plan for dealers and price administration procedures at Company-operated stores have been fairly and uniformly applied based on competitive conditions in the marketplace. Suggestions that legislation be enacted which would require that

companies extend price support offered in one geographic trading area, to a whole state constitutes local government price regulation and is contrary to the system of free competition fostered by the Anti-Trust laws. Further, this type of price regulation can result in consumers paying higher prices for products, over a given time period, or to a situation where consumers in one part of the state subsidize consumers in another location. Finally, this legislation is clearly not in the best interest of service station dealers because the potential economic liability of a statewide price reduction could result in supplier reluctance to offer assistance in cases where only a few dealers require such support to meet competitive conditions. For example, if two or three of our dealers in the extreme western portion of the state could prove serious price competition from sources originating in Pennsylvania or West Virginia, we could currently justify a discount to keep these dealers in business during the price war. But, if this legislature would require us to give the same discount to all 570 Exxon stations in the state, I'm afraid these Garrett or Allegheny dealers would have to survive as best they could – if they could. This is strictly hypothetical. We could be talking about dealers in Montgomery or Prince Georges Counties in identical situations.

In summary, charges that Company operations promote inequitable product allocation, dealer lease cancellation, perpetrate give-away programs and are used as a method of controlling prices are simply unfounded. Certainly, existing laws provide excellent remedies in the limited instances where such abuses might occur. Additionally, direct store operation, in many cases, provides the most efficient, least costly

method of satisfying customer demand. Therefore, Exxon believes the proposed legislation is unneeded and totally anti-consumer for you would be taking the unprecedented step of removing by legislation a choice that belongs to the Maryland motorist, as well as removing vigorous competitors from the marketplace.

We also believe that by passing this bill, the General Assembly would be placing itself in the unenviable position of having to pass a whole series of bills – or delegate unprecedented powers to the Comptroller – to fix by regulation what you are removing by restricting competition. That is, convenience for the Maryland motorist in days and hours of operation, standards of service and cleanliness, complaint handling and customer satisfaction.

Finally, this legislation closes its eyes to the evolution currently taking place in gasoline retailing. The nation is adopting a new conservation ethic, smaller cars, car pooling, more efficient driving patterns.

The dealer association has claimed that 231 dealers have gone out of business due to the energy shortage and 500 more were expected to fold by the end of February. We don't agree with these numbers, but if a trend does develop, we should not be prevented from keeping certain of these outlets open on a salary basis where the public is dependent on them and again to prevent the loss of this gallonage to a national pool.

The development and introduction into the marketplace of new synthetic fuels as the finite supply of liquid petroleum grows more scarce, requires more rather than less flexibility in order to secure the future needs of Maryland motorists.

Our concern, our investments, our planning are

motivated by long range considerations not by today's environment. We were in the Maryland market at the turn of this century. We hope to be in this market at the turn of the next century and those that follow. We simply ask you to consider these future problems as well, before taking action that could place Maryland at a serious disadvantage with relation to surrounding states, when it comes to energy.

In addition, you would be giving the dealer association the muscle to carry off their frequently threatened shut downs and march on Washington – or rally at Lake Montebello. They know this will not work with Company stores in the marketplace because no major oil company would accept that kind of irresponsible conduct be imposed on the Maryland motorist.

Other commodities sold through dual distribution (dealer and direct).

Automotive supplies (tires, mufflers, etc.)
Applicances (TV)
Business machines and forms
Building materials
Books and magazines
Fencing, tanks and other steel products
Fertilizer
Furniture
Glass
Hearing Aids
Heating Oil and equipment
Ice Cream
Insurance
Insulation
Jewelry
Lawn mowers and tractors

Paint
Pianos and Organs
Suits and dresses
Shoes
Silverware
and Bibles

DEFENDANTS' EXHIBIT K-3

STATEMENT OF SHELL OIL COMPANY
ON
MARYLAND HOUSE BILL 918

PRESENTED TO
THE ECONOMIC MATTERS COMMITTEE
MARCH 7, 1974

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Mr. Chairman, my name is Frank Goeyvaeris. I am District Manager for Shell Oil Company with offices in College Park. I am responsible for 198 Shell service stations in the State of Maryland.

Shell appreciates the opportunity to present its views on House Bill 918. The Bill, which would prohibit producers, refiners and wholesalers of petroleum products from operating retail service stations, is plainly discriminatory against the service station and petroleum industries. If passed in its present form, it would hurt the operations of the present independent service station dealers, his supplying companies and the citizens of the State of Maryland.

I would like to take a few moments to discuss some of the problems, and very briefly, some of the legal arguments which would arise if this Bill is passed in its present form. Apparently, this Bill's purpose is to protect the independent service station dealer and to assure that he will remain a viable part of the service station industry.

We feel that the independent dealer or businessman has a very important place and a future in our business. We have leased our stations to dealers for over 50 years. We have found this arrangement to be very profitable for both of us.

It is important to note that out of the total 9100 Shell service stations in this country, less than three percent are operated with company employees. And in Maryland, only one unit of 198 is operated by company personnel.

While it is evident that we have not concentrated on company operated units, we would like to retain the right to operate certain units as company stores if we feel it necessary.

If this Bill is passed we would not have that right and it would clearly discriminate against the petroleum industry since other types of industry would not be affected. Integrated industries such as Sears, Ford, General Motors, A&P, and lesser integrates like the McDonalds, the Kentucky Fried Chickens, the Western Autos, and others, would retain the right to operate their own properties.

There are several reasons why Shell Oil Company utilizes this manner of operation in addition to dealer operations. One is the vast amounts of capital that may have been invested in a single unit, e.g., car-care centers, car washes, combination/restaurant facilities. The capital necessary for these improvements and property is so great it could very well be that Shell could elect not to invest in these units unless it were assured it had an equal opportunity to operate the stores in the future.

Shell operates service stations as training centers for new and prospective managers and they are also utilized

for the purpose of trying out new marketing concepts and techniques. These are then passed on to Shell's dealers to help them improve their business.

There are instances where we have to operate a unit. Occasionally a service station dealer vacates the premises abruptly and it is necessary to provide machinery that can be implemented to continue the operations of the unit. We normally employ temporary help in this instance and in view of today's Federal allocation program, the station would continue with a supply of gasoline which would be available to the citizens of Maryland.

The purpose of any viable business is to make a profit and an equitable return to its shareholders. In light of this consideration, it could be ascertained that a corporation failing to make an adequate return on its investment would look for other opportunities in other areas of the country that would be more receptive to these types of investments.

Gentlemen, this isn't idle speculation. One has to look at the overall picture when evaluating the results of this Bill.

Equally important we should explore some of the legal arguments against House Bill 918.

Shell's counsel has concluded that the Bill is in conflict with the Constitution of Maryland on several counts. It is so clearly an over-exercise of the police power as to constitute nothing short of confiscation by legislation.

The Bill violates the guarantee of due process appearing in Article 23 of the Maryland Declaration of Rights. Virtually overnight, the Bill would convert a legitimate retail business into a damnable nuisance. This

would be without any showing, or any attempt to show, that the business in question, as conducted now or in the past, has brought about any distinctive and substantial evil or peril which would properly be subject to so total an exercise of the police power.

In addition HB 918 denies the equal protection promised by Article 23. It would bar even the smallest of producers and refiners from conducting as much as a single retail operation: yet, (if the Senate Committee amendments to Senate Bill 465 becomes part of this Bill,) wholesalers, no matter how large and resourceful, would be permitted to conduct as many retail units as they choose. Indeed limiting market expansion to wholesalers and retailers well might be in conflict with Article 41 of Maryland's Declaration of Rights which states that "monopolies are odious" and "not to be suffered."

Shell has researched and rejected the Comptroller's contention that Maryland's existing prohibition against the operation of retail liquor stores by wholesalers[1] provides the constitutional basis for a similar ransacking of the petroleum industry. So-called "tied-shops" have been prohibited in a number of states for several years, but it remains a large and open question as to whether these prohibitions are constitutional. It is evident from the few decided cases that this question has only occasionally been raised and has rarely, if ever, been given the careful and scholarly consideration by the courts which it deserves. (One high court, for instance, brushed aside the issue of constitutionality with the

[1]Chapter 501, Laws of 1947; Chapters 404 and 725, Laws of 1972.

mere observation that the matter "... is scarcely any longer debatable."[2]

Perhaps the liquor industry has been tolerant of these impositions because Section 2 of the 21st Amendment to the U.S. Constitution gave special constitutional status to intra-state regulation of liquor during the period following prohibition; or possibly it was because alcoholic beverages, by anybody's definition, involve a certain immediate threat to the health and safety of the community.[3] However, whatever the reasons for such strict control of the liquor traffic, even if they were finally put to the constitutional test and were to pass that test, the same reasons would not be applicable to the petroleum industry.

One further point should be made regarding the content of Maryland's prohibition of tied liquor stores. As most recently re-enacted in the 1972 session, the liquor law prohibits the wholesaler from "... lending any money or other thing of value to the retailer." This limitation, if applied fairly and equally to the petroleum industry, would probably bankrupt scores of Shell's dealers. It could bring about a situation where dealers would be forced to close and because their suppliers would be barred from operating the station with company personnel, the gallonage in the State would be decreased under terms of FEO regulations.

[2]*Lewer v. Cornelius* (1913), 72 Wash. 124, 129 P. 911.

[3]A leading Maryland case on this subject, *Dundalk Liquor v. Tawes*, 201 Md. 58, refers to "exceptional problems" in controlling liquor, and makes it clear (at page 67) that it is only because of the 21st Amendment, and not because of any other inherent constitutional power, that the state can erect barriers to the liquor traffic. Thus, even if extraordinary powers do exist, they would not be constitutional when aimed at other industries.

There is also a question of necessity here. The Bill does not state its policy or rationale, but it seems to arise out of a certain concern that the petroleum refiners and producers are bent on monopolizing the local retail market.

As we've pointed out earlier, Shell has one company-operated station out of 198 in the State of Maryland. Surely it is self evident that we have not contemplated nor do we anticipate any massive shift from lease to salary operations. Could there be any question but that the problem can be dealt with, when and if it does arise, by resort to Maryland's own anti-trust act?[4] This Act, just passed, equips the Attorney General, and private citizens, including every dealer and jobber in Maryland, with a variety and battery of remedies for combating monopolistic activities. The remedies include 6 months' imprisonment and $500,000.00 fines for each offense (Section 40), as well as such extraordinary remedies as "divestiture of property, divorcement of business units, and suspension or termination of the right of foreign corporations . . . to do business in . . . Maryland" (Section 41(1)). Further legislation, eliminating an imagined monopoly, is not needed.

The effective date of the prohibition would raise a second grave constitutional question even if the prohibition itself were found to be constitutional. As most committee members probably recall from past involvement in local zoning matters, there is a concept of "non-conforming uses" which requires that existing uses be allowed to remain for a reasonable period following prohibition of new uses. House Bill 918, by

[4]Chapter 357, Maryland Laws of 1972.

allowing little more than a year for the abandonment of existing and projected uses, would be equivalent to an uncompensated taking of unpardonable proportions affecting large sums of monies in real property. It might be possible to avoid the need to compensate for this taking by granting the sort of 15 to 20 year amortization period appearing in typical municipal ordinances.

Another legal point comes to mind with regard to the possible effect of the proposed prohibition. It is not always fully appreciated just how independent Shell's lessee dealers really are. The business at the premises is theirs, not Shell's; and Shell has very little control over the premises during the firm three year term of the lease. This means, to posit a very relevant and frightening example, that if the boycott of the public threatened by station operators had actually taken place last week (at the very time the Governor was asking the Federal court for 20 million more gallons of gasoline), Shell would not have had the means, or the legal right, to wrest control of the stations from dealers and re-open with company personnel. All that Shell could have done to continue getting product to the public would have been to keep Shell's one company station open 24 hours a day and to hope that those with emergency needs had enough gas in their tanks to get them to this facility.

However, under this proposed provision, we would not have been able to have even this one station open. Perhaps, it would be more logical and more consistent with the pleadings and bleatings of Maryland's leaders, for House Bill 918 to require that the companies have still more company operations so that they will be

better equipped to handle emergencies through continued operations of existing company facilities.

In sum, Shell considers House Bill 918 and its companion Senate Bill 465 to be an attempt, on behalf of a single and sometimes inadequate but never inactive sector of the petroleum industry, to eliminate an evil that does not exist by resort to means which violate the United States Constitution, the Constitution of Maryland, and the best interests of Maryland's good citizens.

In conclusion, we would like to emphasize that this Bill in its present form would discourage the oil companies from expanding the marketing operations in the State of Maryland. It would be clearly discriminatory against the petroleum industry while other retail businesses would retain the right to open and operate company units as they so desired.

We do not feel that there is a need for this Bill. We sincerely hope that your committee will give this Bill an unfavorable report.

Thank you.

DEFENDANTS' EXHIBIT K-4

STATEMENT
of
VIC RASHEED
before the
ECONOMIC MATTERS COMMITTEE

My name is Vic Rasheed and I am Executive Director of the Greater Washington/Maryland Service Station Association which represents almost 700 service station dealers in Maryland.

I would like to begin by telling you gentlemen that these are desperate days for service station dealers. Dedicated to public service many dealers are being forced to watch helplessly as the business they have built up over the past years, with long hours of prolonged toil and exhausting effort, decline and become marginal as the energy crisis cuts their allocation of gasoline drastically.

In the meantime, even as gallonage decreases drastically, some companies persist in forcing dealers to pay large amounts of 'make up' rents which is the difference between minimum rent figures (based on a projected gallonage sales figure) and the actual amount the company is able to supply the dealer during a particular month.

For example one dealer whose minimum rent is based on a 90,000 gallon per month sales minimum, but has been allocated only 60,000 gallons, must still pay the difference based on 1.8 cents per gallon, or $540 per month in make-up rent.

Efforts by my association and others, including

Governor Mandel who wrote a letter to oil companies involved in this practice deploring their actions, have been of no avail.

Now beset by the critical gasoline supply situation, the squeeze by his landlord-supplier and the shrinking service and tire, battery and accessory market, the dealer is now faced with an even more serious problem.

That is the sinister threat of the major oil companies to complete their takeover of the retail-marketing of gasoline, not just to be in competition with their own branded dealers, but to squeeze them out and convert their stations to company operation.

In fact they are using the energy crisis not just to amass record profits but to complete their total control of retail marketing and remove their last vestige of competition left in the industry to add new profits.

The Conference Report (93-628) on S. 1570 (Emergency Petroleum Allocation Act of 1973) states:

> "... the committee wants to express its concern with the downstream vertical integration of the major oil companies into the distribution and retail levels of the market. Major oil companies have begun to market secondary brands through wholly-owned distribution subsidiaries. The primary brands are to an increasing extent being marketed through so-called salaried or managed retail outlets. Branded independent marketers, already under short term lease and supply agreements, are finding that their agreements are not being renewed. Leases of one year's duration are being converted to thirty days. Representatives of branded dealers believe that this represents an attempt by the majors to force private entrepreneurs out of the retail market and to convert station operators to salaried employees. . . ."

The major oil companies, fully aware of the impending energy crisis for the past two years, began to plan for it then, by beginning to eliminate smaller stations and concentrate on fewer, larger outlets to be run by the companies themselves rather than the dealers.

Since the gasoline shortage, the companies have closed many smaller dealer operated outlets and diverted this gasoline to their company-operations. In Prince Georges County Exxon has just been granted zoning for a huge new 10-bay car-care center. The company said it would close two smaller dealer locations nearby in return.

Some locations which pumped perhaps 70,000 gallons as dealer-operations began pumping over 200,000 gallons as company-operations.

Meanwhile dealer-operations ran dry. This has happened in Montgomery County where we read the pump meters of such a station to determine its gallonage. When this was protested, the station was promptly closed for one week since it was in obvious violation of the Federal Manadatory Allocation Regulations.

In the Washington metropolitan area before the Christmas holiday weekend, the company-stations of a certain brand were filled up. These were the only stations able to open during the holidays except for one or two exceptions. This is the type of favoritism which result if the companies are allowed to remain in the retail market.

The companies correctly anticipated the no-competition, captive market situation that we now have in our industry, and decided that selling gasoline would

become a much easier, more profitable, task than in the past and one large outlet could easily pump the volume of 10 smaller ones if it concentrated on gasoline-only. This concept also had the advantage of saving hugh amounts of money in building and equipment maintenance and most of all in the expense of supplying product to only one location instead of ten.

An example of this is the BP move to eliminate its 8,000 dealers to replace them with a limited number of company-operated 'Gas & Go' outlets which sell gasoline only with no service to the motorist.

About one half of these dealers are now out of business and the program is partially stalled in Maryland because of a suit by some of the dealers who are suing to retain their stations rather than turn over the businesses they have built up over the years, intact to BP.

BP incidentally is taking just the prime locations to turn into 'Gas & Go' gasoline only outlets. The others have been given a one-year closed-end lease which means that they will sell or close these stations unless they prove successful and they decide to convert them also to 'Gas & Go'.

In the state of Connecticut and New Jersey where franchise legislation giving some protection and certain rights to the dealers was passed, Mobil promptly began taking over its stations to run them as company-operations. We were informed that Mobil was ready to adopt the same plan in Maryland last year if certain legislation contained in SB 821 was passed.

Exxon has already switched many of its prime locations in Maryland to company-operation. For the past several years, Exxon has been following a policy of

not leasing to dealers, change-over locations which become available and pump good gasoline. Generally anything over 40,000 gallons has been converted to company-operation. Exxon has also been building and operating huge-new 10-12 bay car-care centers throughout Maryland and in fact the whole country. These do sell tires, batteries and accessories and often at the same price their branded dealers have to pay for them. Dealers find that when the wholesaler who supplies them, enters the retail market, in direct competition with them, they cannot compete. In many cities throughout the country, such as Houston, Texas, 90% of the company's stations are already company-operated and the dealers have been forced out.

Exxon like almost every other major oil company, has also entered the secondary-brand market with the Alert brand, again using the gas-only theme. Company-operated, these stations have been built across the street in some instances from Exxon dealers with the expected results. The dealer is soon forced out of business by the lower-priced secondary brand.

Further compounding the threat of company-operation are the new leases with numerous escape clauses which would void the leases in the face of certain eventualities, such as mandatory allocation or if confronted by certain legislation.

Shell has a clause in its three-year leases to its dealers which simply states that if the company should decide not to continue using dealers in a particular area, the lease can be cancelled at short notice.

Exxon in a new lease to its dealers does not provide an automatic renewal clause in the lease and in fact eliminates it all together. Exxon also has some tricky

language in the lease (paragraph 19 & 21) which is obviously intended as an escape clause in the event of certain restrictive legislation being passed—to allow it to cancel a dealer out.

We would like to point out to the senators that there are presedents for banning a wholesale supplier from competing with his own retail distributor in the retail market in Maryland.

I cite the case of the beer-distributors and the wholesale-whiskey suppliers who are forbidden from competing with their retailers.

Why then should the oil-companies be allowed this special privilege?

When any industry is given a license to establish a monopoly extending from the well-head where the oil is first drawn, to the tankers which transport it across the ocean, to the refineries which process it, through the pipelines which deliver it across the country, through the tank-trucks, through the service-stations which retail it to a captive market; then we have handed over full-control of our nation's jugular vein to a clique of oil-moguls who make policy decisions, directed not by patriotism or the national interest, but by their relentless search for profit and more profit.

When I was in Saudi Arabia last summer I was thrilled by the sight of the world's largest oil fields, the world's largest refinery, the world's largest oil tanks each holding 70 million gallons or enough to last the state of Maryland for 20 days.

I was thrilled because it was American-owned. But where has that 10-cent per barrel of oil been going since it was discovered in 1938?

Not to the U.S. but to Europe and Japan where the companies were able to get four times the price they could get in the U.S. The companies deliberately with held this cheap oil from the U.S. market so as not to compete with and force down the price of their domestically-produced oil. This maneuver, is officially estimated to have cost Americans some $5 billion dollars per year in higher gasoline and heating oil prices. It is also one reason why U.S. oil reserves today are dangerously low to the point that our domestic production is declining each year.

Our oil industry has grown beyond the borders of our country to where its American character has been replaced by a multinational one.

Are the legislators of Maryland now about to let this octupus loose and unrestricted in the state of Maryland, among our small businessmen to devour them? We sincerely hope not.

The men that you see here today are the back-bone of American small business. Their story is typically American. They had the initiative to save and go into business for themselves. They have worked hard in a vital industry. Many now have children in college who one day will be doctors, nurses, lawyers and perhaps even State senators.

We are here today asking you, our own legislators to protect us from an economic giant who would take away our very livelihood and our children's future in its greed for greater profits. Please give us the protection we need to save our stations.

In the Circuit Court for
Anne Arundel County

Exxon Corporation	:	
Plaintiff	:	
v.	:	*Equity No. 22,069*
Marvin Mandel, Governor	:	
et al.,	:	
Defendants	:	

Continental Oil Co., et al.,	:	
Plaintiffs	:	
v.	:	*Equity No. 22,091*
Marvin Mandel, Governor	:	
et al.,	:	
Defendants	:	

Shell Oil	:	
Plaintiff,	:	
v.	:	*Equity No. 22,216*
Marvin Mandel, Governor	:	
et al.,	:	
Defendants	:	

Gulf Oil Corporation,	:	
Plaintiff,	:	
v.	:	*Equity No. 22,461*
Marvin Mandel, Governor,	:	
et al.,	:	
Defendant	:	

Phillips Petroleum Company	:	
Plaintiff,	:	

v.	:	*Equity No.*
Marvin Mandel, Governor,	:	*22,502*
et al.,	:	
Defendant	:	

Ashland Oil Co.,	:	
Plaintiff,	:	
v.	:	*Equity No. 22,502*
Marvin Mandel, Governor	:	
Defendants	:	

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[3] Pursuant to notice the deposition of Charles H. King and J. D. Campbell were taken on Thursday, June 19, 1975, commencing at 9:30 o'clock a.m. at the office of the Attorney General of the State of Maryland, 11th Floor, One South Calvert Building, Baltimore, 21202 before James F. O'Brien, Jr., Notary Public.

APPEARANCES:

Louis A. Noonberg, Esquire,
and
David F. Tiefara, Esquire,
On behalf of Exxon Corporation

Wilbur D. Preston, Jr., Esquire
On behalf of Continental Oil

Robert G. Abrams, Esquire,
On behalf of Shell Oil

Lawrence S. Greenwald, Esquire,
and
Nancy E. Paige, Attorney,
On behalf of Gulf Oil

Fred W. Drogula, Esquire,
On behalf of Ashland Oil

John Henry Lewin, Jr., Esquire,
and
Richard Goetsch, Esquire,
On behalf of Petroleum

John A. Woodstock, Esquire,
On behalf of Defendants.

[4] *STIPULATIONS*

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of these depositions by the witnesses be and the same are hereby waived.

CHARLES H. KING,
and
J. D. CAMPBELL,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

MR. WOODSTOCK: This is the deposition of Petroleum Oil Incorporated. They are not a party to this particular suit. At this time, I would like to have Mr. Lewin, counsel for Petroleum Oil, Inc., to introduce the two deponents.

MR. LEWIN: The first is Charles H. King, Vice President Marketing for B.P. Oil Inc. and the second is J. Douglas Campbell, Jr., who is General Manager of Retail Sales for B.P.

It is understood, I believe, Mr. Woodstock, that both deponents have been sworn and will answer questions as you propound them.

[5] MR. WOODSTOCK: Perhaps if we can, pursuant

to the summons, maybe they can just briefly state respectively their general areas of information which they will then field the questions for. We will try to produce less of an overlap for the purpose of expediency.

MR. LEWIN: I think you can do that.

MR. KING: I'm not real certain what he is going to be asking of us. My responsibilities are of a general nature and have been with B.P. during most of – or since May of 1972, in general management, and am prepared to talk to the history of the corporation and its relationship to the current market price situation and Mr. Campbell has been with the operation the last couple of years and has been directly involved in our retail station operation and can probably answer in more detail some of the specific questions than I could.

MR. WOODSTOCK: At the outset, I would like to thank you gentlemen for taking time out. I know you are busy.

MR. LEWIN: I think the record should reflect the depositions are being taken pursuant to provision of a protective order signed by counsel of all parties and the understanding is that the transcript of this deposition, [6] shall be filed in the court under seal and any exhibits which will be introduced during the course of the taking of this deposition will not be subject to public scrutiny until such time as it is ordered by the Circuit Court for Anne Arundel County.

MR. WOODSTOCK: Okay. In fact, the documents we will introduce today will be marked as exhibits and noted in the deposition but will be separately transmitted by the Attorney General's office directly to Judge Childs of the Circuit Court of Anne Arundel County.

I would like to deal with general questions as to when the decision was made by B.P. Oil, Inc. to go to the Gas and Go route.

MR. KING: It's a decision that was made in the Summer of 1973.

EXAMINATION OF MR. KING

BY MR. WOODSTOCK:

Q. Was there any background studies and reports done of the marketing areas that led to this decision? A. Yes. These studies grew out of a task force I had appointed early in the year 1973 and the results of the study were written up and presented to our management committee [7] which is the corporation officers who are on the Board of Directors and then eventually approved by the full Board in June of 1973.

Q. Were there any preliminary investigatory work done in 1972?

I'm not trying to trap or trick you. There is a report of recommendations dated November 1972. Perhaps if I show you the document – A. The study followed an experiment with Gas and Go operations that had been moving forward in Philadelphia in 1972 and perhaps it was a report written up leading up to that project.

Q. Mr. King, I'm giving you a document and perhaps either you or Mr. Campbell can identify the document.

MR. CAMPBELL: This report was a follow-up to a conventional expansion program that recommended that that program be stopped.

Q. Was that conventional program you are referring to – were those studies performed in the 70's or 60's or when? A. Perhaps I ought to go back at this point in time. I know a little history here that I think is appropriate.

[8] Q. I'm going to ask you some general questions about that.

Mr. Campbell, would this document in any way reflect those prior studies on conventional operations of which the 1972 document perhaps would be an expansion of or recommendation pertaining to?

MR. CAMPBELL: Yes. This document recommended as it says, a retail marketing expansion for Washington and there is one for Baltimore, also. It's dated November, 1970.

This report of late 1972 is a follow-up to the 1970 report.

Q. Was the 1970 document performed for B.P. Oil Corporation?

MR. CAMPBELL: Yes.

Q. The 1972 report is a B.P. Oil Corporation document?

MR. CAMPBELL: Yes.

Q. I will ask the court reporter to mark the first document which will be Defendant's document study of the Washington Retail market and recommendation for expansion, market development planning, November 1970. I guess we can call it No. 1. It is 66 pages total.

[9] (Whereupon document referred to above was marked Deposition Exhibit No. 1)

Q. I would also ask that Defendant's Exhibit No. 2 be entered, entitled "Recommendations" dated 11-3-72. It is 26 pages.

(Whereupon, document referred to above was marked Deposition Exhibit No. 2.)

Q. I would also like the record to reflect copies of these documents have already been provided by counsel from B.P. to all counsel for the plaintiffs in this action.

Now, Mr. King, perhaps you can give us some of the history. Primarily, I am interested in knowing what the situation was with B.P. Oil historically, perhaps commencing with the late 1960's, the method of operation being utilized by B.P., how they got there and why, in 1972, they decided to change? A. B.P. is a wholly-owned subsidiary of Standard Oil of Ohio and became part of SOHIO in January 1970. It had previously been Sinclair properties along the East Coast from Maine to Florida

with two refineries and it was involved [10] with a merger with ARCO and then, of course, the Justice Department asked them to separate out that and these assets were acquired by British Petroleum. So, SOHIO and British Petroleum entered into an agreement which merged these properties with SOHIO along with assets of oil on the north slope in exchange for 25% ownership in Standard Oil going to British Petroleum. So that these marketing assets along the East Coast and these two refineries were operated by B.P. since January of 1970 and they have turned out to be extremely unprofitable.

Sinclair Oil operated their operations without paying a heck of a lot of attention to the marketing phases of it and when we got into it we just found that the distribution lines were so thin and the market penetration so little that there was just no way we felt we could continue the operation as it is to make money.

Q. How many years did B.P., after they acquired the Sinclair locations continue to operate in the conventional manner? A. We acquired it in January of 1970 and we operated it until mid-'73 that way and in that period of time we did everything – we had learned how to make the marketing [11] operation and refining operation profitable in our SOHIO experience and during this time we pruned out and divested ourself of our assets in the Carolinas. Then, in New York State, we withdrew from New York City by selling our stations and terminating them because of the lack of possibility there.

In 1973, we sold the assets in Florida and Georgia along with our Texas Refinery to American Petrofina because we had learned by that time that the capital investment to become a viable major marketer wasn't going to give us the kind of return you would expect so we sold off those assets. In the Summer of 1973, we relocated out

of our headquarters in Atlanta up to Wilmington, Delaware and proceeded to try to market profitably from Virginia, north to Maine.

Q. You mentioned the SOHIO experience. Isn't it true that SOHIO has traditionally marketed direct retail in Ohio? A. Yes. And, most of my career has been spent in that organization.

Q. In other words, in 1970, when BP acquired the Sinclair location for the Maryland area, SOHIO Oil in [12] Ohio already had a relatively lengthy history in direct retail? A. Yes.

Q. Why was the decision to maintain the conventional method of operation – if I'm not mistaken, the report of 1970 made the direct recommendation we undertake an expansion program. A. Yes. As part of BP's early association with SOHIO, the study you referred to was made of each of our major markets because we could not spend the kind of dollars necessary throughout the 16 States. We analyzed the market within it to see where the growth potential was, where we had representation, with the idea well, let's concentrate our investment. So, as a result of the studies in 1970, we decided we would buy land and build conventional service stations in Baltimore and Washington, Atlanta and Florida and after doing that, then, thru '71 and '72, as a conventional service station, we had spent upwards of $50 million in land and buildings, conventional two and three-bay service stations. We didn't change our market penetration.

The market that was growing about 4% a year – why we were getting all of our growth strictly through the new [13] stations we would put on and our others weren't going at all. Our ability to get sites zoned, even though we had monies available, was very disappointing, considerably below what we had forecast what we would be able to do.

In an area like Washington, it takes a couple of years to get a site zoned and you have a lot of failures so we never really got the program off the ground and after spending all this money in two years time, we decided that to continue that way – we had to make the decision of either withdrawing completely from these markets, as we had from the Carolinas and Florida and Georgia, or do something significant to improve the profitability.

We lost, in the four years, over $150 million in this business and we just couldn't continue at that rate, hence the decision to stop making investments in conventional service stations and see if there wasn't a viable way of retailing in a profitable manner; hence the study and the task force report leading on the Gas and Go decision.

Q. In those two years, you said you lost $150 million? A. Right.

MR. PRESTON: Four years.

Q. Four years, you lost $150 million.

[14] How did the retail operations stay in business those four years? Where was it financed from? A. It was financed out of corporation funds.

Q. All aspects of the corporate funds? A. Right.

Q. Revenues produced by what aspects would go into that total fund? A. The whole resources of the Standard Oil Company.

Q. Including refining? A. Everything.

Q. Exploration? A. Including coal mines. The whole thing.

Q. During those years of conventional operation, I would like to key in on the Baltimore area.

Was the Baltimore market profitable or non-profitable?

MR. LEWIN: When?

Q. During '70 to '72. A. It was unprofitable. I recognized that it was reported but that was not fully allocated.

In other words, we used functional reports that don't necessarily allocate to a private center. In your example, Baltimore. All the [15] home office management overhead and research expenses – in other words, it's not a financial report in terms of what an annual report for a corporation would be, a balance sheet kind of thing.

It is an internally used thing to compare the retail operations or the entire sales operation in an area with that similar kind of operation in other areas or compare what change has taken place from one year to another with similar assumptions, rather than an end result profit and loss statement like you would have at the end of the year for whole corporations.

Q. Maybe Mr. Campbell can answer this if he is involved with Baltimore, Maryland for the purposes of retail marketing of BP Oil, Incorporated.

During the years 1970-1972, segregated as a whole from the BP operation, was the Baltimore market showing a profit or a loss, the retail operation only?

MR. CAMPBELL: I can't answer your question directly. Let me digress a little bit.

As Mr. King said, the report that you are referring to was a functional report to compare one division to [16] another and to compare particularly those areas of income and expense that were directly controllable by – for instance, the Baltimore Division Manager.

These reports were not financial records and they did not go into complete detail down to what would be considered an absolute bottom line profit or loss number.

EXAMINATION BY MR. WOODSTOCK
OF MR. CAMPBELL:

Q. What factors go into this functional report of the Baltimore Retail Market?

Am I right or wrong in assuming it pertains to the

profit or loss shown at the retail operation being undertaken by the Corporation in a given marketing area? A. Direct, naturally, yes. But specifically, no. In other words – I'm sorry – I can't answer your question directly as I said initially.

I have seen an attempt to fully allocate income and expense for the mid-Atlantic Region which included the Baltimore-Washington Division, Virginia, Maryland, District of Columbia, Delaware and those operations in total were showing a loss during this period of time.

I have not done an analysis of Metropolitan [17] Baltimore specifically, fully allocating every to the nth degree to be able to tell you that it was absolutely profitable.

MR. KING: The numbers we use to determine a BP total possibility in time back to this $150 million loss number I cited is a number that includes the refining piece of it, the marketing piece of it, the distribution piece of the whole ball of wax.

Now, that would have charged against it the allocations for these overheads. When we get down to looking at what has happened in the middle-Atlantic region of which Baltimore Sales Division was apportioned for field management use; we are looking at things over which they don't have control such as the amount of advertising expense that is going on; the charges for credit card operations; the engineering expense; etc.

There are things they don't have any control over so we develop functional profit and loss statements that would include their salesmen's expenses, their maintenance expenses, their distribution expenses concerned with the [18] middle Atlantic region, site costs, etc., a portion of the BP home office allocations costs of running that operation and using those kinds of numbers, Balti-

more was about a breakeven proposition in 1972 and 1971.

EXAMINATION OF MR. KING

BY MR. WOODSTOCK:

Q. In 1972, when the decision was made to convert from conventional to the Gas and Go program –

MR. NOONBERG: I thought the witness said that was 1973 when the decision was made.

MR. LEWIN: The Summer of '73.

Q. All right, '73. What part, if any, did the report and recommendation and study by Mr. C. L. Hickerson play in that decision, the BP Northeast Project Report?

MR. LEWIN: Of May 9, 1973?

MR. WOODSTOCK: Right.

MR. KING: It played a major part in it.

Q. Is that the result of the task force that you spoke of? A. Right.

Q. Approximately how many people were involved in that? [19] Do you have any idea? A. Well, a great many people. There were five, roughly, key personnel.

Q. Key personnel? A. Key personnel.

Q. May I ask you to look at this document and identify it.

Would you read for the purpose of the record, the title of it? A. This document is our BP Northeast Project Report containing the recommendations and summary of this task force which led to the decision to convert some of our marketing operations to gas only retail –

Q. We will have this marked as Defendant's Exhibit 3.

(The document referred to above was marked Defendant's Exhibit No. 3.)

MR. KING: You concentrate on this gas only. The facts are BP is now selling only 10% of its gasoline through these kinds of units. 90% of our billion, three hundred million gallons a year are going through inde-

pendent [20] marketers and the jobbers. So, this project that you are talking about is a drop in the bucket compared to the total.

Q. I appreciate that. Thank you.

* * *

[23] Q. We may have already touched on it but can you tell me what the primary circumstances were that made the conversion to Gas and Go so profitable at that time or estimated profitable in 1973? A. Well, I think our experience in operation of stations in Ohio, our experience in two experiments that were run; one in the Pittsburgh area and another in Philadelphia, and the success that we saw taking place in the independents who were marketing through gasoline only facilities. They all went together to convince us that it was a way that undoubtedly we could sell gasoline, retail gasoline, and do so profitably.

Q. Was the supply situation a factor in this decision? If it was not a factor, was it considered that it would effect this conversion to the Gas and Go type of operation? A. The assumption was made there would be plenty of supply. We were in the process of spending $150 million to expand and modernize our marcus hook refinery and in contemplation of having gasoline available through that means. There wasn't any question in our minds in that period of time that we would be able to supply the gasoline manyfold. Again, I comment that this is still 10% of our business.

MR. LEWIN: Are you referring to retail refined supply or crude supply? A. Refined supply of gasoline.

Q. Would you turn to page 11 of the BP Northeast Project document? Referring to the second full paragraph on that page.

MR. LEWIN: You mean the first full paragraph. The second paragraph or the first full one?

Q. Yes. I will read that entire paragraph and ask you a few questions about it.

(Whereupon, paragraph referred to above was read into the record.)

Apparently in this report the supply situation was a factor and was considered and discussed. My reading of that paragraph indicates that so-called second rate private branders may have a hard time getting supply and this [25] may produce additional business available for integrated suppliers.

First, I would like to ask you who would be considered a second rate private brander? A. I don't know Mr. Hickerson had in mind.

EXAMINATION OF MR. CAMPBELL

BY MR. WOODSTOCK:

Q. Mr. Campbell, do you know? A. Well, he's talking about private branders, gasoline only marketers without a secured supply and a refining capability. The ones he names here are all people with refining capability to the best of my knowledge so I have to assume when he is speaking of second-rate private branders that he is talking about those without their own refining capability.

MR. KING: You have to recognize the time-frame in 1973 and what was going on when this statement was developed. At that point in time BP, where it had – was allocating gasoline in the neighborhood of 70% under a voluntary program to its customers and in order to reach 70% to its regular customers, it cut off a lot of independent [26] marketers who we did not have contracts with and who depended on us for gasoline.

Now, the allocation program under the Federal Energy Act changed all that and required us and everybody to go back and supply all of these people. Subsequent to this statement in this period of time – so, they were getting under this program their fair share of what was available

so that the statement that appears in here is countermanded by the Federal Energy Act.

What the inference here still is it's our experience that major dealers – that dealers of major oil companies, including our own, tend to operate on the philosophy of low volumes, high margins, and the independent marketer tends to operate on the philosophy of low margin, high volume. As long as those two things are at work in the market place, there is room for both of them and there is a change to shift our operation from what was a conventional operation, mostly dealer operated or operating on the philosophy of low volume and high margins, to shift over and do what the independents were doing and make a buck at it and that's what I think we are trying to say.

[27] Q. The last paragraph on page 11 reads: "The point of the aforegoing is not to predict precisely what may happen in the market place in light of the current tight supply, it is to demonstrate while private brand buyers may be in for a rough time in the future, the integrated oil companies who sell via the Gas and Go approach are in no basically different position than other integrated companies and may actually profit from the supply situation."

What is your understanding of what is meant by that? How can an integrating company marketing through Gas and Go actually profit from the tight supply situation?

MR. KING: Well, I think Hickerson is stating there as the supply fails to reach the demand the price is going to go up. And as at this point in time there was a limited supply and the major oil companies were trying to protect their regular customers, the dealers, they would stop supplying where they could, gasoline to the independent buyers and that would – obviously, if the Scott and these small independents – I guess Scott is in that category – their customers would then have to go buy from

other outlets if there wasn't any gas available from these independents. As I said, [28] that didn't happen because the law came and said you can't cut these people off and it is still the law.

Q. Didn't the law also allow that if you opened a new location to supply that location?

MR. KING: If you got Federal Energy approval.

MR. CAMPBELL: I think the thing this particular statement is doing more than anything else is saying there still will be fierce competition in the gasoline only business even if some of the spot market buyer type gasoline only markets have difficulty in obtaining supply. This being true because of our sufficient gasoline only marketers with assured supply that are not going to have a serious problem. That competition is not going to diminish particularly.

EXAMINATION OF MR. KING
BY MR. WOODSTOCK:

Q. Mr. King, you mention margins. Is the margin in the direct company run operations smaller or greater than a conventional operation? A. Come again?

Q. You mentioned margins of profit. A. Right.

[29] Q. I think that's the difference between the cost of the gasoline to the dealer and what he sell it at, is that correct? A. Okay.

Q. And the cost to the company at what they sell it at. A. All right.

Q. Would the margin be higher or lower to BP Oil marketing gasoline and sells directly to the public through a Gas and Go location or through a conventional station?

MR. LEWIN: It's a meaningless question. I don't understand it.

Q. Is there a greater margin when BP sells gasoline – A. I think the margin depends so much on how well you are running your stations and what is going on. I think

our studies have showed our differences are very minimal. The factor is if they are the same, dealer operations per unit may pump – let's say in our terminology at best 25,000 gallons per month per unit, whereas a gasoline only facility – you are talking about 150,000 gallons a month. If you are [30] assuming a four cent gross margin concept you multiply that times the gallons and that is where the success of the Gas and Go operation comes into play. It's not the margin per gallon, it's the number of gallons we are talking about.

Q. Does the Hickerson report project a greater profit margin selling directly as opposed to the conventional operation? A. Yes.

Q. Do you have an idea – can you tell me please, what the difference was? Was it one cent, two cents, per gallon? A. Gee, I don't recall. It was something less than a penny. But, again, as I said, it's the volume multiplier that makes the profit per station the attractive thing in a gasoline only kind of operation.

In other words, if you made a penny gallon on a 30,000 gallon dealer station and you made only half a cent a gallon in a gas only operation but you were pumping five times as many gallons through the gasoline only operation you would be better off going in the gasoline only operation.

Q. Let's move up to the implementation period of the [31] gas and go conversation.

The Hickerson report was filed May 9, 1973. Can you tell me again when the Board of Directors considered it and decided to – A. I recollect it was in June of 1973.

Q. For the purpose of the Baltimore market – you can refer again to the report there, I believe at the beginning of page 14.

They give a current listing of BP stations for the various markets. On page 15 there is a column of listings of

the competitors BP had previously identified as those producers, refineries, with whom they were in competition.

The number, I believe, in the Baltimore column was 27. What was the total number? I'm not sure if it's reflected in it or not.

MR. LEWIN: 27 what?

Q. 27 locations, gas and go. A. What kind of locations, BP Gas and Go's?

Q. Right. Page 14, the top of the page. The proposal was initial Gas and Go's in Baltimore, 19; conversions 8. Rate of new building, two per year. The 19 initial Gas and Go's, were they already company owned and operated? [32] A. No.

Q. Where part of them company owned and operated? A. They weren't even in existence. What we are saying is that we felt in analyzing the properties we owned in Baltimore that roughly these numbers, 27, would be suitable to make into gasoline only facilities.

Q. Bear with me a moment. A. You are referring to page 46.

Q. It was also in the previous report, too.

The appendix, page 46, in the Northeast Project document. The total number of locations identified to be Gas and Go's or potential Gas and Go's was what? Can you tell me? I believe it's 40, is that accurate? A. 27.

MR. CAMPBELL: There are 30-odd here. You have to bear in mind some of these, for instance North and Madison and 25th and Harford are anticipated purchases of new sites where there wasn't a BP station of any kind at the time this report was done.

The 27 referred to properties owned or leased by BP or that would be suitable for gas and go and had [33] a conventional station on it at the time of the report.

That's what the disparity in numbers.

Q. Do you know offhand the total number of BP company owned and operated Gas and Go locations currently operating in the State of Maryland?

MR. CAMPBELL: I think it's about 35. I would have to get a list and give you a specific number.

MR. KING: You have to recognize at this point in time our organization – our sales organization was a Baltimore sales function and a Washington sales function and Washington also has Maryland sites in it. So, we were looking at – you were just talking about Maryland. You have to combine parts of both of those markets.

Q. If you combine both of them, can you give me an estimate of the total number in the State of Maryland?

MR. KING: That was the number Doug gave you.

MR. CAMPBELL: 35, plus or minus two.

Q. On top of that, was that a result of the initial conversion plus the two per year expansion and the estimate of the Washington, D.C. –

MR. CAMPBELL: Yes.

[34] MR. KING: If you look on page 45 which precedes that, you will see a whole list of Washington locations, a great majority of which are Maryland potentials. So, we are looking at that point in time that may be 50 plus possibilities and we are saying that out of that so far we have got 35 of them in operation.

MR. CAMPBELL: Just to put these lists in proper perspective and the report, too, I think this report is a result of a study done by the task force and their best estimate of how to proceed and what sites to use and not to use.

As we implemented Gas and Go, we went back and reassessed everyone of the sites, and some, for one reason or another, have dropped out, and others, for one reason or another, have been added.

This list was not cast in concrete just because it happened to be appended to this report. Naturally, this is the way we want it but not specifically down to the letter of the report in any case.

Q. Perhaps that can be most graphically demonstrated by some of the recommendations as to implementing the [35] conversion and BP's dealing with the existing dealers at those site locations.

MR. KING: Right.

MR. CAMPBELL: We were simply told we were not going to do that.

Q. What did you decide to do with the existing dealers?

MR. KING: We decided – did you get our September letter?

MR. WOODSTOCK: I have it. I would like for you to tell me.

MR. KING: We decided to offer dealers who were in stations that we didn't plan to convert to gas only operation several alternatives. One is to become – we are talking now about all dealers. Some of them were in sites that we had intended to make gasoline only facilities and those dealers could become the manager of that station.

(Discussion off the record.)

EXAMINATION OF MR. KING

BY MR. WOODSTOCK:

Q. Mr. King, I believe when I interrupted you, you [36] were telling me what BP policy decision was with regard to existing dealers at locations where there was going to be a conversion. A. Another alternate we had available was they could buy or lease the facility they were in if it happened to be one, as most of them were, that we were not going to convert to Gas and Go. Or, if we had another location available, they could transfer or move over to that station and we would pay whatever relocation expenses were involved.

Q. Would the man realisticaly have the opportunity – this is hypothetical. I don't know if it existed. I have reason to believe in some situations it did. If the man was a dealer at a location doing maybe 60,000 or 80,000 gallons a month, would he be able to move to a new location with that type of gallonage history or would, under the key locations BP had in the Baltimore Metropolitan market, would they have been eliminated because of the gas and go program would have preempted those locations? A. I think in looking at that question, the answer factually, in another situation we determined there were roughly about 35 facilities that were available to these displaced dealers. That were, in our estimation, first-class [37] locations. The point being the inference has been made, gee, we were selecting for Gas and Go use all of the key sites where there was high-volume potential and that there was nothing left for the dealers we displaced from these locations but the dogs. That's not true. Gasoline only facilities are keyed to high traffic volume locations. We had purchased in the last couple of years, prior to this time, a good many sites in Vienna, Virginia or in Springfield, in Gaithersburg, Maryland, places with neighborhood kinds of stations, that there would be a lot of inside work as well as substantial volumes in the numbers you are talking about.

A good site, for instance, is the Columbia, Maryland station we had which was pumping high volumes. It was not a gas and go location. These kinds of locations were offered and made available to dealers.

Q. Do you have any idea how many opted for that option?

MR. CAMPBELL: I can't give you a number.

EXAMINATION OF MR. CAMPBELL

BY MR. WOODSTOCK:

[38] Q. Can you give me a percentage estimate? A. I have to look at the list. The only one I can think of

readily is a situation in Laurel where the man moved from a station we wanted for Gas and Go to a brand-new conventional station that we had just purchased the site for and constructed the station and it was a good conventional location, I like to believe, or we wouldn't have purchased it. But, it did not fit the mold for Gas and Go and he opted for that. There are other similar examples. I can't give you a number right off hand.

The thing is, the dealers in the Gas and Go sites were offered the alternative of becoming what we call an I-manager or an incentive manager of a gasoline only facility when it was constructed and in those instances, and I think there were like seven or eight that are still now with us as Gas and Go I Managers in Maryland; we bought their inventory and equipment and disposed of it ourselves so they would suffer no loss on getting rid of their assets.

These guys are quite happy and they are doing a good job for us and I think this has worked out. Other people moved to competitive locations that were available and [39] in those cases we would pay them a relocation allowance. Some people got out of the service station business entirely. In those cases, we purchased their inventory and equipment.

I can't think of any example right offhand where one of these dealers bought outright another conventional station from us. Compared to examples elsewhere, where that has happened, and generally, these alternatives have proven to be viable alternatives. That is, dealers that were in locations where we wanted to replace conventional operation with a gasoline only operation, the dealers in locations that were not identified for Gas and Go were given new leases. And, in those cases, there have been some that have purchased the facility and we have continued to supply them. We didn't take any action to get these people out of their conventional stations.

Q. Did you accomplish the goals set forth in the Hickerson report for the total number of conversions and Gas & Go units? A. Slowly but surely we are getting there.

Q. Are you sure you didn't hit it right on the head by 1974?

[40] MR. KING: These days, we are not sure of anything.

(Discussion off the record.)

Q. On page 14 of the BP Northeast Project Report it suggested or recommended projections for initial gas and go was 19 with 8 conversions, the rate of new building, two per year.

Maybe I am wrong the way I interpreted these figures. 19 means right off the bat open up Gas and Go's, is that correct? A. No. That means to tear down the conventional facility and build a new Gas and Go facility.

Q. Those could be existing dealer locations? A. Yes, it could be.

Q. The 8 conversions? A. That means that the existing facility was not removed, just altered for use, to put it out of the service business and make it a gasoline only outlet without razing the existing facility and rebuilding a new facility.

Q. Were the 19 initial Gas and Go's and the 8 conversions taking place simultaneously? A. Yes.

Q. You had a total of 27? [41] A. Yes.

Q. The rate of new building at 2 per year. Was that the first two per year to be built the same as the initial year of implementation? A. No. The two per year is anticipation of acquisition of additional property. It made the assumption that we would be able to buy two sites suitable for Gas and Go each year throughout the period covered by the project report.

Q. Those would be absolutely new locations without any existing facilities? A. They may be a competitive station that we buy or a vacant piece of land. It's talking

about going out and buying something that we didn't own before.

Q. Okay, so then the project was implemented in 1973. With the projected number of 27 locations, by 1974, it would have been 29.

MR. LEWIN: For Baltimore?

Q. Right. Do you have any idea how many we have in Baltimore right now? A. As I said, it is I think 30 or 35 right now.

[42] MR. KING: You have to recognize again that Baltimore, Maryland, as you are talking about it, encompases what this report calls Washington and Baltimore.

You are putting these numbers together and that is totally meaningless.

Q. Would you define the Baltimore market for me, Mr. King.

MR. KING: What we now consider the Baltimore market?

Q. What you considered it in 1973 and 1974.

MR. KING: The Baltimore market is shown on page 4 of that report as a map.

(Discussion off the record.)

Q. Mr. Campbell, I am handing you a document. A. This one?

Q. Would you read the title on the document? A. BP Gas and Go stations as of 8-31-74.

Q. I believe we have already established that we can't establish the source of that document.

Do you have any belief – A. I am pretty sure it was prepared by our District office here.

[43] Q. Would you look at the listing under the Baltimore Gas and Go's? A. Yes.

Q. Is the information reflected on the document accurate, to your knowledge? A. Yes.

Q. Including that on the second page? A. To the best of my knowledge, yes. I'm not exactly sure when each

and every one of these stations began operation as a Gas and Go but I assume this is correct.

Q. I ask that this document be marked as No. 4.

(The above referred to document was marked Defendants' Exhibit No. 4.)

Q. Defendants' Exhibit 4 is two pages entitled BP Gas and Go stations as of 8-31-74.

It is a listing for Washington D.C. and there is a listing for Baltimore, Maryland.

If you like, maybe you can verify it. I count that there are 24 operational Gas and Go's in Baltimore.

MR. KING: On August of 1974?

[44] Q. 1974. A. I count 28.

Q. There is an additional 8 stations listed. A. Right.

Q. What does that represent? A. They are conventional company-operated stations.

Q. Are they potential Gas and Go sites? A. Not all of them.

Q. How many of them would be? A. All but one. You're talking of Baltimore ones. Let me look at the Washington ones, too.

Q. No. I'm just interested in Baltimore right now. A. Okay.

Q. From the projected implementation period from 1973 to 1974, numerically, you have just about reached your goal, is that correct? A. Yes.

Q. How many dealer-leases, supply agreements, etc., have been terminated by BP during the implementation period? To date?

MR. LEWIN: What period are you talking about?

[45] Q. From 1973 until now.

MR. LEWIN: You mean the Fall of 1973 until today?

Q. The implementation of the Gas and Go commenced in June of 1973.

MR. KING: It followed our September announcement letter of 1973.

Q. Can you give me the total number? A. One.

Q. The total of all cancellations in any way, shape or form? Do you have any idea? A. You mean mutual terminations and everything combined?

Q. Yes. A. I can't give you a number off the top of my head. Understand, John, I'm not hedging on you. My responsibility is the East Coast, not Baltimore.

I have a hard time talking specifically down to the nth degree on just Baltimore.

(Discussion off the record.)

Q. On page 14 of the BP Northeast Project – A. Yes.

Q. The second paragraph, verbal. What we propose is [46] retaining 76 of the owned stations and 44 of the leased ones. With the existing operations, by itself, it is a relatively meaningless indicator of the total volume or profit potential as part of the implementation to Gas and Go.

Am I right in assuming that one of the factors in that program would be the divesting of BP by various locations that were retail service station sites? A. Yes.

MR. LEWIN: Will you repeat the question?

(Whereupon, question referred to above was read back by reporter.)

A. If I may just elaborate on that a little bit. We have divested a number of properties, just not one being occupied by a service station. Some vacant sites throughout the period since SOHIO acquired BP Oil Corporation, to try to reshape this marketing operation into a profitable entity.

MR. KING: As I recall, there are upwards of 200 stations in Maryland that we have divested and sold to jobbers that are continuing to operate probably as service stations, only the jobbers own them or have assumed our lease on them and this kind of thing. [47]

So, the area we are talking about is in that as defined by the map is where we intend to build our gasoline only facilities.

There is a Delmarva Peninsula part of Maryland. There is the Cumberland part of Maryland where we had dealer operated and perhaps company operated service stations as well as jobber operated service stations that were going to be and are now jobbers.

Those company operated stations and company owned stations we had in that part of Maryland, we have sold to jobbers. What they have done with them, I don't know, but they paid us money for them. So, I assume they are continuing to operate them with their own dealers in them.

Q. Getting back to page 14 of the BP Northeast Project document. Are the numbers reflected there the total 203 for Baltimore – okay, are they service stations? A. Yes.

Q. Can you tell me as of this date how many of those locations have been successfully divested by BP? A. Not specific, no.

Q. 50%, 75%? A. I don't think it's that high.

[48] Q. The projection is to divest yourself of all of them, correct?

MR. KING: How many dealers do we now have in Maryland, roughly? 150? A. Yeah, about.

MR. KING: The BP Oil Company has approximately 150 dealer-stations in the State of Maryland. In addition, there are hosts of other dealer-operated stations that our jobbers have in the State of Maryland.

Q. Would you tell me what the document generally reflects? Can you identify that document or the information contained thereon? A. This is a recap of dealer terminations from the period January 1, 1973 to December 31, 1974.

Q. Would you read off the figures that appear on the recap sheet? A. Dealer leases mutual cancellation fee and third-party; dealer initiated 53, company initiated, 24,

Dealer leases expiration of underlying lease total expired 31, other cancellations 7.

Supply agreements terminated, 31. Total 146.

Q. Now, if you can, can you take each category and [49] tell me what that means to you, mutual cancellation, dealer initiated? What that means? A. That means that BP and the dealer mutually agreed to – well, the dealer decided that he wanted out of the station and we agreed to it.

Q. The second category is – A. Is company initiated. This is where we sought possession of the station and the dealer agreed.

Q. The next category? A. Dealer leases expiration of underlying lease. This is where we leased the land or the building, service station facility or the site it sits on, and we lost our lease with the owner of that property.

Q. The next category? A. Other cancellations. There are a list of seven here, detailed individually, why each of these seven people left BP.

Q. I would like to have this document identified and marked as Defendant's Exhibit 5.

(Whereupon, the foregoing document was marked Defendant's Exhibit 5.

[50] Q. As reflected in this document from January 1, 1973 to December 31, 1974; it was a total of 146 dealer leases mutual cancellation fee and third-party concluded. A. 115. 31 are supply agreements. Remember, we are mixing apples and oranges here a little bit because we are talking about some Gas and Go locations in there and some non –

Q. Let me ask about supply agreements terminated. Generally, what type of supply agreement would that be, and with whom? A. That would be an agreement whereby we supplied someone who owns his own outlet, be it a service station or a grocery store or a garage.

Q. Would he be marketing under the BP Brand name? A. Sometimes.

Q. Other times? A. Well, many times these little garages don't even have signs.

Q. Would any of these supply agreements perhaps be with people who would buy from BP and then market perhaps under their own brand name? A. I can't think of any offhand, but it's possible.

[51] Q. 1973 to 1974, we terminated 117. Is that what you said? A. 146, less 31.

Q. 115 were accomplished. Did any of these result in lawsuits? A. Yes.

Q. Do you know how many? A. On the last page of the attachment there, it shows the status as of the time that piece of paper was prepared.

MR. LEWIN: There are actually a couple more. There's Mr. Monroe. He brought a lawsuit. Mr. Jones brought a lawsuit. They have all been dismissed.

Q. A total of about five or six lawsuits, then? A. Yeah.

Q. Do you have any idea what has happened to those site locations? A. Which site locations?

Q. Where the underlying lease dealer initiated mutual terminations, mutual cancellations. Those 53 locations that were dealer initiated. Has BP divested themselves of those locations or retained ownership and converted any [52] of those locations? A. I can't tell you in general terms. I'd have to go through them individually. Some became Gas and Go and some have been divested.

I just can't tell you specifics. That's a very broad question.

(Discussion off the record.)

Q. Mr. Campbell, I'm giving you a document and I ask if you can tell me if the information reflected on there is an accurate representation of Gas and Go locations that resulted from mutual cancellations.

A. Yes, it is; with one qualification. There are a couple of these locations that the dealer listed on this piece of paper left before Gas and Go was in the picture.

Q. Can you identify those.

A. Yes. I may miss one or two. 29th and Greenmount. I don't know why that guy left or where he went. Falls and 36th. I think he left before the Gas and Go program and went to a competitive station.

Those are two that come to me off the top of my head.

6900 F Street. That had little to do with Gas [53] and Go.

Q. Would you give me the total number of Gas and Go locations on those sheets?

A. 14.

Q. So, with the exception of 3; 11 Gas and Go locations resulted from mutual termination or mutual cancellation at those locations, is that correct?

A. Yes. But keep the numbers straight. The last three on this list are in Washington.

Q. They are in the State of Maryland.

A. Yes.

Q. So 11 are in the State of Maryland.

A. No. Those three are in the State of Maryland, but they would be part of the numbers in the report under Washington.

Q. In setting up Gas and Go stations how is the retail price established at those stations?

A. On the basis of competitive resale prices in the trading area of the station on an individual station basis.

Q. Then each station price would be set independently and can very well be different?

[54] A. That's correct.

Q. What was the estimate of the relative profitability

from the Gas and Go stations at this point of operation as opposed to the conventional?

A. The Gas and Go stations were expected to be more profitable.

Q. For what reasons?

MR. KING: Because we had more volume and less expenses.

Q. What was the projected volume for those locations?

MR. KING: Approximately 150 but it would vary one to another.

Q. Was BP under an allocation program at that time in June of 1973?

A. Yes.

Q. Was that voluntary?

A. Yes.

Q. When did the mandatory controls come in?

A. My recollection is January of 1974 or November of 1973. I forget. Somewhere in there.

Q. Under those allocation formulas, how is the base [55] period for each location established?

A. In conformance with what that station was pumping in that same month of 1972.

Q. Were there exceptions to that rule?

A. I don't follow you.

Q. Was there a procedure under the FEA Statutes and administration in which an oil company could request an exception or a change for that base period?

A. Yes.

Q. Was that at the inception of the mandatory controls or did it come about later?

A. My recollection is it came about later.

MR. DROGULA: March of 1974.

Q. Mr. Campbell –

MR. KING: John, the facts are, as I recall them that we went to the FEA in February of 1974, explaining

our program and trying to get their concurrence with what we were doing. Namely, converting to Gas and Go and setting up what our relationship was with dealers. Subsequently, in conformance with regulations, in May, we supplied them with a bunch of their forms called FEO 17-S [56] specifically requesting allocations for gas only facilities which were different than the base volumes they would have pumped had they been open in 1972.

Q. Did BP file many such requests for changes in their base period under the FEO 17 form and FEA procedure?

MR. KING: We were required to file one for every Gas and Go station we had.

Q. Were such requests made for every Gas and Go location?

MR. KING: Yes.

Q. The effect of such requests was to increase gallonage at that particular location which would have been prohibited if we had to use the 1972 base figure?

MR. LEWIN: Do you mean is that what they requested, an increase, not effective?

MR. KING: We asked for a base period volume commensurate with what our projections were with what we could pump at those stations.

Q. Do either of you have any knowledge, approximately, what percentage of such requests were granted by FEA?

[57] MR. KING: At this point in time, almost all of them have been granted. I have to qualify that in terms of in November of 1974 the FEA gave us allocations in the amounts we requested for a 60-day period. In January of 1975, they gave us five month allocations for these same stations. Last month these came to a termination and they gave us a permanent allocation for these stations.

Q. I believe it's true and if it's not, please correct me. The Hickerson report seemed to indicate the average BP conventional location was pumping around 32,000 gallons per month for Baltimore or 33.

A. Was it that high?

Q. Is it higher or lower?

A. I recall the overall number was about 20,000 gallons a month. I don't recall specifically the Baltimore number.

Q. Well, Mr. Campbell, just from your own knowledge, can you give me in round figures what the average would have been for the Baltimore-Washington D.C. markets for the BP conventional stations in 1972?

A. I would guess in the high 20's and low 30's.

Q. What were the latest requests, average or general [58] requests, in gallonage for all of the gas and go locations that are now currently in operation and for which you just recently received those permanent allocations?

A. Around 120,000 gallons a month.

Q. Per unit?

MR. KING: No, sir.

(Discussion off the record.)

Q. What was the general amount of gallonage requested for each gas and go location by BP of the FEA for a monthly allocation?

A. Aproximately 120,000 gallons.

Q. Can you tell me what FEA eventually granted you as an allocation, a general figure?

A. About 65% of that.

Q. Which would total about 80-some thousand?

A. Yes, 75 to 80 thousand.

Q. During the period of the shortage, were any of these requests of FEA for increased allocations for stations in the Baltimore Metropolitan area or the

Washington D.C. suburban Maryland counties, were they granted?

MR. LEWIN: Can you be more specific in terms of the period you are talking about?

[59] Q. The severe shortage period.

MR. LEWIN: Are you talking about January, February, March of 1974?

Q. Yes.

MR. KING: What is your question?

Q. Either Gas and Go's or company operated, even if it was in conventional manner.

A. Yes. There were some approved during that. They were submitted in April and they were approved two or three months thereafter.

Q. Was there any reaction by the remaining conventional BP dealers of the dealers that it switched to the William Penn brand name to the increased allocation to the company operated stations?

MR. KING: I am confused on the time frame here because in January of 1974 there wasn't even this procedure. The law was just coming into effect and we weren't in it, at that time, for allocations by stations.

MR. CAMPBELL: We submitted applications on some company operated conventional stations and some Philadelphia Gas & Go stations in April of 1974 and that was the first [60] submittal to FEA by BP.

(Discussion off the record.)

Q. I would like to just get back to pricing at the Gas and Go locations. I believe your previous testimony was each location would be determined independently based on the competition within that area. Is that correct?

A. Yes.

Q. In working under the Gas & Go direction operation concept, does that give you a cost advantage in meeting that competition by setting your price for that respective trade area which was greater than it was

under the traditional conventional marketing concept where you gave dealer aid?

A. Will you do that again? I'm sorry.

Q. In shifting to the Gas and Go approach and in setting the price to a given location to meet competition in that trading area; is there a cost advantage to BP in meeting that competition through setting their own prices in a Gas and Go as opposed to having a conventional station which BP is giving dealer-aid to?

A. Let's separate that into two pieces. Let's talk [61] about a cost advantage on the one hand and pricing on the other hand. On a per gallon basis, if we run these Gas and Go's right, it costs us less to run them than it costs us to run a conventional station on the same site.

I don't know what you mean by cost advantages as it relates to price.

MR. KING: Or dealer pricing over which we have no control.

Q. But under the traditional conventional station operation, how did you meet a price reduction by a competitor in that trading area?

A. In a conventional operation, we are selling product to the dealer. He determines his own retail price. If in a given trade area we decide to lower our selling price to all the dealers in that area, it's up to them what retail price they post.

With the company operation we establish the retail price and I don't see the connection.

* * *

[62] Q. In setting your price in Gas and Go trading areas, [63] where you have Gas and Go location, what factors, other than the general factors of the price of your immediate competitor would you consider in setting that price and arriving at that retail figure.

What I'm asking for is would it be three cents under or three cents lower than independent major –

MR. KING: There is no – in establishing the price of Gas and Go's, we take in many factors. One, and primarily, is what our competitors are doing out there and secondly, is how much gasoline do we have available. Because, under the allocation system, it is limited. So that oftentime you have to consider how much volume you have available for sale at that station in a month's period of time.

Thirdly –

EXAMINATION OF MR. KING

BY MR. WOODSTOCK:

Q. Was there a projected spread between the pricing at the Gas and Go than the major distributors of gasoline at their retail stations?

MR. NOONBERG: I would like to see him answer the question about the factors.

[64] Q. Go ahead. I'm sorry.

A. Another factor to be considered is the cost of the product and the cost of our operation. It doesn't pay to price the product at a cost less than maybe what you are selling than it costs you to produce it.

In these days, in our company, we have probably the highest cost pass through over the base period and that has an extremely important impact on our pricing philosophy. So, in addition to the cost of our operation as a Gas and Go, one of the reasons that any one marketing through gasoline only retail outlets can price lower than the conventional service stations is the economy in operations.

In our case, for instance, we have no advertising. We do not now have credit cards, branded credit cards. We do not accept credit at gas and go stations.

We man it so our gallons per man hour are extremely high and thereby reducing our cost of operation to a

minimum. And those savings are passed onto the customer in terms of a lower price.

Q. How much lower?

A. This will vary by whatever the specifications are at the time.

[65] I think generally in an average overall situation we are talking about in the two and three cent range.

Q. Between whom?

A. That depends on a set of specific stations. It might be that we are equalling people in the market, not trying to be below them and again we are not trying to be the lowest price in the market place or the trading area. The objective would be to move the volume at its highest margin of profit as you can, not just to try to be the lowest and move the most volume out of it.

Q. Didn't you say the greater the volume, the greater the profit? Am I right or wrong in assuming –

A. It depends on what your price is.

Q. One of the objectives of the Gas and Go is to have an efficient operation selling a maximum amount of gasoline?

A. Yes.

Q. Would not a lower posted price than the posted price of the majors competing in a trading area increase your volume?

A. Generally if price were the only factor that was [66] important, but there is a lot of other factors that influence the customer's desire to buy from you than what the price is.

Q. Am I right or wrong in stating that the Hickerson report said for the Baltimore market price consciousness was at a very high level and there was no indication that would change.

A. That's true.

Q. That is the percentage of the market that you are seeking to get into was the private brand market.

A. The price conscious customer was the one that we were trying to appeal to. The customer who was seeking the lowest price, or what he thought was the lowest price in the market place. That's right.

Q. That's what you are trying to capture, that customer trade you were trying to capture.

A. That customer, to a point – there's no sense in trying to capture that customer if in so doing you have to have a price that is so low that you can't make any money.

It's not just volume that we are looking at, it's profit that we are looking at.

[67] Q. Again, at the outset of the implementation of Gas and Go, in what range would the Gas and Go locations be pricing in comparison to the branded majors of the market?

A. Our economics as the Northeast report shows, are based on a retail price somewhere in the two to three cent per gallon less than the projected major in price.

That's the general average kind of concept. But, in the real world, what a competitive major may be charging may be totally different than what the economics and the general approach was.

Q. I'm not sure that you answered my question.

A. Then restate it.

Q. Am I correct in saying that your answer was that the –

A. What is your question?

Q. The idea was that in initiating a Gas and Go location, the idea was to price several cents below the posted major pricing in a given trading area.

A. The idea is to pass onto the customer the advantages you receive from lowered expenses in terms of a lowered price. And, we estimated that our savings

would enable us [68] to save that customer in the two to three cent a gallon number, overall.

Now, to take the stations at X and Y Street and there may be a Saveway across the street and there may be an Exxon on the other corner, and their pricing is such that you are just glad to meet that price and you can't achieve a two cent lower price or match them on the head because to do so would be unprofitable.

Q. If you went into a trading area where perhaps 20 stations, all branded majors, and the average retail pump price for regular was .539, if you went into operations, how would you set the price at that location?

A. We would probably go in and again, you have to look at the time frame because the cost –

Q. I'm asking a very simple question.

A. You think it's pretty simple. You don't know the business. Because if you are talking about .539 in June of 1974, it's a different figure than .539 in May of 1974 because the price of gasoline has changed. So, for you to make a statement like that, you don't know the facts.

Q. The statement in here that the goal was to price two to three cents – is that difference between them and [69] the majors out of the window?

A. Right. In today's market, what this report was talking about was a placid conventional kind of situation. What is out there today because of the price controls is totally irrelevant to the assumptions and the facts that were in that report.

Q. Under today's conditions, could the Gas and Go's operate just as well under independent dealers?

A. Will you repeat that?

Q. Under the facts in the market conditions today could a Gas and Go location work just as well, just as

profitably, perhaps, utilizing independent dealers to pump the gas at that location?

A. We don't think so because we think that having control of the hours of operation, having control of the pricing at that station, having control of the service that is given because it is company operated, will enable us to maximize the volume at a given location versus turning it over to a dealer who is free to do these functions like the hours he operates or the days he operates or the prices he charges on his own.

[70] We do have three dealer operated Gas and Go's in Baltimore – in Washington – so we are doing it.

Q. How are they doing? Does Mr. Campbell know?

MR. CAMPBELL: So far, so good. But it's too early to tell. If I may add my nickels worth here. The key to success for the gasoline only operation, as I can conceive it, keep in mind we are still pretty new to this business and we are still learning, is a balance between price or realization volume and what it costs you to run the operation.

It's how those pieces fit together that determine how much money you are going to make and the volume at which you should be operating that particular station, the price you should be operating at, and how you should be manning that station.

Your example of 20 stations in a trade area are up and down a street, I think is a very realistic situation, but 19 of those 20 gasoline outlets may be grocery stores and garages where gasoline is a secondary business. There may be one gasoline outlet in that particular area that you consider a competitor because as you gain experience, [71] at least so far this is my belief, you find out that some other gasoline outlets within the general vicinity of your outlet are going to have a greater impact with their price with respect to yours than are others. So, when you talk about an

average price in a trading area, it just doesn't work that way. You cannot work with averages.

EXAMINATION OF MR. CAMPBELL

BY MR. WOODSTOCK:

Q. Has BP performed price surveys of the Gas and Go locations in their immediate trading areas?

A. Yes.

Q. As a result of those pricing surveys, were the Gas and Go locations priced lower, higher, or even with a branded major?

A. Typically, lower.

Q. By approximately how much?

A. That varies all over the map.

Q. Between what variables?

A. One and three cents.

Q. How about with the unbranded independents?

A. Anywhere from equal to them to in some cases two or three cents above them and in some cases maybe one or two cents below them. It depends on the specific [72] circumstances.

Q. How about with Crown, Hess, Kayo?

A. It varies all over the map. It really does, from location to location.

At some locations, a particular Crown or Hess or Saveway Station may have a dramatic impact on your volume, depending on his price. Or, if you have all three in a trade area, one of them may be the guy whose price with respect to yours has the greatest impact on your volume. So, you pay attention to him and relatively discount the others.

MR. KING: You may have a situation where you have a Crown that is posting .529 and an Exxon that is posting .519 and you may find that the Exxon has the greatest impact on your volume. So, you will match his price to try to equalize it versus the statement that well, we are going to be at the Crown price or we are

going to be two cents below the Exxon, the major price.

So, to generalize, again, it goes back to Doug's comment that you have to take into consideration a host of factors, at least three, other than what your competitors [73] are pricing.

You have to look at again, how much volume you have because there's no sense just to say we said this station is going to pump 150,000 gallons and cut some low price out there and sell your gasoline in three days. That's kind of wrong.

Q. Was there any anticipated reaction by the other majors to the implementation by BP of the Gas and Go operations?

MR. KING: Yes. We were concerned at the time we were making the project that we might cause them to respond to our pricing practices in such a way that it would be harmful to the market place. But, as a matter of fact, things changed so completely and that has not happened.

Q. The documents that have been introduced there are several references to the Baltimore market being a volatile market. Can you explain that?

MR. LEWIN: Why don't you ask him if he agrees with it, first?

MR. KING: No, I don't agree with that. To me, we have a great many more markets that are more volatile, if my definition of volatile as really extremely price competitive and as a result the average retail price is lower. A market like that is Philadelphia where generally gasoline [74] is a couple cents below the average price in Baltimore, for instance.

Q. The Baltimore market, itself. Would you say it's been a stable market since BP has been operating under the BP Gas and Go in Maryland?

MR. KING: That's a relative term and I would say compared to Philadelphia it has been a stable market. Compared to Washington it has not been a stable market.

Q. What type of reaction was being anticipated?

MR. KING: The writer of the report, Hickerson, had a belief of his own that by our going in with a sizeable number of Gas and Go's, we might upset our competition by pricing two and three cents less than them so they would get real concern and they would be dropping their price. Then, you would have this price war situation that had existed earlier. But, a lot of things transpired and that never happened. I did not happen to believe that. To me, the number of stations that we sought to open in any one market were so small that we weren't going to be a factor and we weren't going to be pricing any different than other independents that were already in the market. So, I just never [75] bought his concern.

MR. CAMPBELL: With the absence of advertising, we don't take any credit cards whatever at the Gas and Go's and the economies in the operation of that station. In other words, the manpower cost, particularly.

We can reduce the amount of money per gallon it costs to run a Gas and Go by two or three cents below what it costs to run a conventional station. Therefore, you can afford to sell gasoline cheaper. That's the essence of the question.

* * *

[76] MR. LEWIN: Margin between what and what?

[77] Q. Profit margin and the cost of product and the ultimate sale to the consumer.

MR. LEWIN: You are talking about BP gross margin per gallon of gasoline?

A. Between our cost of goods? I would say that –

Q. By comparison. Try to compare it to what it looked like with the conventional service station operation, the return on the sale of a gallon of gasoline as compared to a direct operation.

Q. Let me put it this way, John. To date – remember, we have been operating Gas and Go's in Baltimore since late May of last year only. Today, it appears that our margin and our expenses are finally well in line with the projections in the BP Northeast report.

Now, keep in mind that during this whole period of time we are under price controls, tremendous increased crude costs and a number of elements that were not present at the time these projections were made.

It really is way too early for me to say that all of Lee Hickerson's dreams are coming true categorically. [78] From the results to date, we think we are on target and generally those projects are in line with our actual results.

Q. I think this is a correct assumption. As part of the pricing policy for the gas and go's, one of the considerations that would be involved would be to try to promote stability in that market place. Is that correct?

A. I think our objective again is to balance price against volume against the cost of operation. Okay? I don't know what you mean in the first place by promote stability.

Q. You would not like to see a reaction to the price that you have set by the majors or the private branders leading to a price-cutting situation that may evolve into a price war?

Is that a valid factor and is that a consideration?

MR. KING: We talked about that earlier when we said that in a price reacting market you end up having

to either support your dealers by lowering your price to them and therefore losing – like the $213, or if you have a Company operation, you realize less margin. So, I think the ideal situation would be to have a stable market, in your [79] terminology.

Q. In a stable market comprised of an homogeneous group of competing dealers, primarily majors and independent majors such as Crown, Hess, BP, would your pricing policies be in such a market to not undercut all that competition because of the fear of a response?

A. The facts are still whether it's us or somebody else that is running a gasoline only facility. If they run it right, they can afford to sell gasoline more cheaper than a guy trying to provide service and a diverse line of products to the consumer. That's just the way it works if you do it right. Consequently, the whole appeal of gas and go to the public is, that that price saving is passed on to them, otherwise, they have no reason to buy from you. And I don't think you can compare a gas and go to a conventional operation because personally, I don't know what motivation a person would have to buy from a gas and go if forever more it was the same price as the conventional station.

MR. KING: You recall the report stated in it that Hickerson felt we were really competing with the Crowns and Hess and Saveways. We didn't say we were competing [80] with the majors.

We are, in the broad sense of the term, because every driver of a car is a potential customer.

We thought originally that our main thrust would be to price with these other individuals that we have cited, the Hess, and the Crowns and so forth, but what happens in the market place is some of these major dealers might decide, gee, I see Crown and Hess taking

my volume away, I'm going to lower my price to protect that. So, you can't ignore the majors in the market place.

Q. What would BP's response be at a gas and go station if their primary competitors, Hess and Crown, dropped their posted prices two cents?

MR. KING: We would first see what its effect is on our volume. If we didn't see our volume changing, we would probably leave our price where it was.

Q. Assuming it reduced your volume.

MR. KING: Then we would probably decide that we would have to decide whether we would drop one cent or drop two cents.

Q. If you could, would you categorize the pricing [81] policy to the Gas and Go stations as aggressive, non-aggressive –

MR. KING: In relation to what?

Q. Gasoline pricing and the overall market place.

MR. KING: If your definition of aggressive is a price two to three cents less than a normal major brand marketer, yes, that's aggressive. But, I don't think that's aggressive as what's going on out there. That is passing onto the customer the savings you are getting from running that kind of operation. I think that's the whole concept that you have to get across here.

We are just not out there pricing along with the Crowns and Hess at two and three cents less than the majors because we want to get all the gasoline. We are saying we have a kind of operation that has some economics in it that we are trying to pass onto the customer. I think that's the name of the game.

Q. Was the conversion to Gas and Go projected to produce total sales of more gallons of gasoline or less?

A. Than what?

Q. Than was previously sold through the conventional [82] operations.

MR. LEWIN: You mean company-wise?

Q. Yes.

A. Eventually, yes, but more.

Q. Initially?

A. I don't know. Let's look at the numbers.

MR. KING: I think the facts are John – I don't know whether it's in that report. Philadelphia, where we first started this program. We ended up selling more gallons in a period of time through 19 or 17 Gas and Go's than we were through 60 dealer, say, or some number like that. But again, volume is -- again, we're not just out there to sell volume. We are out to make a profit.

A. Our overall situation was one of having a relatively small number of quality sites and the concessional advantage of gasoline only marketing is that each station operates on its own. It doesn't take a massive overlay of advertising and promotion and other kinds of support.

I think that all relates to conventional outlets, to make a Gas and Go station successful. That is why they are looked at as a single entity with volume projections for each rather than under the shared market concept that [83] you have heard about in this industry for years.

Q. As part of the conversion program, it was stated in the report that certain locations we should keep and we should not divest and that we should not make Gas and Go. It was suggested in there that they were fairly good locations we could get dealers for. Then, in two years or so we will decide what to do with them. Was that done?

I noticed on the sheet of stations there were approximately eight or so in Maryland that were held onto.

A. Let me look at the list and speak to the point.

Are you talking about that list on page 45 for Washington, four locations on it?

Q. You have Washington, Monroe, Pulaski and Haven.

A. Again, this report said what we – this task force. What you think you should do with these individual stations. Once the report was finalized, we went back to all these locations and reassessed their potential and decided whether we should go Gas and Go.

Now, looking down this list, Washington and Monroe, Pulaski and Haven, 29th and Greenmount, were all made part [84] of the initial group of Gas and Go stations.

Patapsco and Ninth is a conventional station and as far as we are concerned will stay a conventional station. West Lafayette – I'm not familiar with that. A couple of these I just don't know. But, the same approach was applied to these stations as was applied to the list of the initial Gas and Go's, to rethink as we gain experience, how we should proceed. And, the directions given here is don't just forget about those stations, think about these as potential Gas and Go's. I don't know whether that answers your question or not.

Q. On the 36 page recommendation of 1972, I think the concern was to retain local zoning use permits.

MR. LEWIN: 17 and 18?

Q. 11-3-73.

MR. LEWIN: Number 2.

Q. Are you with me?

A. Yes.

Q. Beginning at the portion of page 17 where it is underscored properties retained for future consideration.

Continuing on page 18 there is a listing for [85] Baltimore, a total of 24 units. The recommendation was

perhaps change the name brand and retain the location. Continuing to page 19.

(Whereupon, the first three paragraphs of page 19 were read into the record by Mr. Woodstock.)

Was that portion of the report implemented?

A. No, because what we implemented is what I described before and the alternatives we gave people in the Gas and Go stations and alternatives we gave people in all other locations. That is what was implemented.

Q. None of these locations continue to be dealer operated?

A. Some of them do, yes. Some of them are gas and go now.

What I am saying is we didn't treat them any differently than stations in the two categories I described before.

Q. Do these still have the BP brand on them or are some of them converted to William Penn, if a dealer chose to stay there?

[86] A. That's correct.

Q. What, both? Some of them have William Penn?

A. Yes. The Gas and Go's are BP and the conventional stations are William Penn.

Q. How many of those can you identify as Gas and Go's?

A. You talking about the Baltimore list now?

Q. Yes.

A. Eight.

Q. Leaving a total of 16?

A. Yeah, some of these I've never – they don't ring any bells for me, at all.

Q. Were those 16 dealers that remained there informed these were potential Gas and Go stations and they were to remain there as dealers pending the determination in-house by BP?

A. No. Because we have, in most of these cases – I say this simply because these locations are not familiar to me. We have decided that these are to remain conventional stations.

Q. At the time that this portion of the program was implemented, had it already been decided that they were going [87] to remain conventional?

A. You are saying September 1973?

Q. Yes. Or, were these properties retained as potential sites for Gas and Go outlets?

Either you know or you don't know

MR. LEWIN: The date is the problem because this report is November 3, 1972. If you are talking about that point in time, conceivably once again if you're talking about September 1973; there is a different answer. If you are talking about last month, conceivably there could be an entirely different answer. What date are you talking about?

Q. Let's start with June 1973. That's when I believe they implemented that.

MR. KING: This is November, 1972.

A. This report is November 1972. This is June 1973 and we moved to Wilmington and formed our current real estate organization in August of 1973.

MR. KING: Yes, September 1st.

A. At that time, these people began reassessing all of these locations.

Now, let's go back to your question. If you would repeat it again, we can talk about the specifics again.

[88] MR. LEWIN: I think the question you asked of the list that appears on page 18 of the November 3, 1972 report was were the dealers at those locations advised that the company was considering converting their stations to Gas and Go.

Was that your question?

MR. WOODSTOCK: Right.

A. Probably not, but I don't know for sure.

MR. KING: That's in November of 1972. The dealers were all told by letter in September of 1973 something that was totally different than was envisioned in November of 1972 and our facts were that probably of those stations that were listed as potential, we may have changed our minds on a whole batch of them by then and decided they were Gas and Go, let's quit horsing around, let's bite the bullet and go and do that. Some of them, we may have decided they're not. So, what happens in September of 1973 and what was projected in November 1972, are two different things.

Q. They were not told in 1972? They were all notified by letter in 1973, including all locations that [89] were perhaps potential BP sites that were kept dealer operated to retain the zoning use permit, is that correct?

A. We did not string any dealer along to protect our use permit, if that's what you are getting at.

This whole thing that is described here of working out a mutually acceptable arrangement to keep the station operating has not entered the picture. Again, we operated under two plans for two kinds of situations or two situations.

MR. KING: The plan that was implemented in September of 1973 which is the first time dealers were told what their status was and what alternates they had, was totally different from the plan that was thought about by Hickerson when he wrote this in November of '72 concept. It was a different world and we made it a point that every dealer understood how we looked at his station. If he was in one that was going to be a Gas and Go, we told him. If he was in one that we didn't know what was going to happen, we told him we didn't know. If he was in one that we knew was not going to be one, we told him that, too.

[90] Q. Let's change tracks just briefly and then I will be finished.

At what time was the latest request by BP for allocations made to all FEA? What was the last one in time?

A. Last week.

Q. Is it done on a monthly basis? I believe you said it was a permanent allocation.

A. It's done on a station basis.

Q. For each station?

A. Yes. If we acquire a new site, we have to go through the procedures described in the regulations to obtain a base volume for that location.

Q. Was any base volume changed for Gas and Go locations which I would imagine would be keyed to getting an allocation from FEA?

You are saying these are all done separately at individual dates and they are not done all at one time, for example, for the Baltimore market.

A. Let's get straight the difference between Gas and Go stations on sites where BP had a conventional station and sites we are acquiring today which we did not have any title to or any ownership in previously.

[91] Q. Okay. I'm talking about the BP Gas and Go's in operation today that have not been newly constructed within the last six months.

A. The bulk of those applications were submitted in May of last year.

Q. May of last year?

A. That's right.

Q. That were approved?

MR. KING: May 29th of this year.

Q. That was 60%, I believe.

MR. KING: One whole year later.

A. On an average, yes, 65% of the requests.

Q. Was there any dealer reaction, William Penn dealer reaction to those approvals that you know of?

MR. CAMPBELL: Part of the FEA procedure is to write to all competitors in the general vicinity of any outlet, be it ours or a dealer outlet, any outlet, and solicit their comments. That is part of their requirements. They received some comments from William Penn dealers, not very many, and some from other dealers.

Q. I think I am finished, but I would like to reserve [92] some time for redirect.

MR. PRESTON: You have that, even without reserving it.

(Whereupon, a short recess was taken.)

CROSS-EXAMINATION OF MR. KING

BY MR. GREENWALD:

Q. As I understand it, you are vice president of marketing at BP, correct?

A. Correct.

Q. How long have you served in that capacity?

A. Since May, 1972.

Q. Prior to May, 1972, tell us in what capacity you served for BP.

A. Prior to May of 1972 I was regional manager in the SOHIO operation in Toledo; the year before that, division sales manager of Toledo for Standard Oil Company of Ohio.

Q. Immediately prior to becoming Vice President, what basically were your duties for SOHIO?

A. I was in charge of the marketing operation in Northwestern Ohio, in Southeast Michigan, encompassing the retail service station operation sales to the consumer [93] trade, heat oil sales, our real estate activity, distribution activity, maintenance activities In that whole area.

Q. That included operations, did you say?

A. Yes.

Q. And prior to that what did you say you were?

A. Prior to that, I was the Division Sales Manager primarily responsible for just sales versus the operating end of it as distinguished from operating pieces of marketing, really, but it was a very similar kind of thing. Our organization changed. We didn't used to have in the Ohio regions. We just had divisions. So, ostensibly, for tactical purposes it was a very similar job of a narrow geographic area than the region manager.

Q. That was approximately –

A. Between May of 1962 until two years later, May of 1974. 1964, I mean.

Q. Then from May of 1964 to early 1972, you were regional manager?

A. Right.

Q. Now, what did you do prior to becoming division sales manager?

[94] A. I was the employee relations manager in the Marketing Department.

Q. What were your duties there?

A. To act in a staff capacity working with the marketing management, responsible for advising them in areas of labor relations, benefit plans, compensation programs, training.

Q. In connection with that capacity, you also dealt with the operations phase of the business, I gather?

A. Yes, sir.

Q. During what years did you act in that capacity?

A. Between 1959 and 1962.

Q. Now, prior to becoming personnel manager, what did you do?

A. I was in a similar position in the retirement end of our operation.

Q. By our operation, you are still talking about Standard of Ohio?

A. Right.

Q. What were your duties there?

A. Very similar. They were marketing except in the [95] refining end of the business. I started with SOHIO in February of 1948 and worked through various employee relations kinds of assignments up until I went out as the division manager in Toledo in 1962.

Q. And you've been with SOHIO and BP continuously since 1948, is that correct?

A. Correct.

Q. What did you do prior to coming with SOHIO in 1948?

A. I went to college and served three years in the Navy.

Q. Where did you go to college?

A. Rutgers University.

Q. What was your major course of study there?

A. I was a Liberal Arts major.

Q. I don't suppose you took any course in oil economics?

A. No. My objective at that point in time was the labor-relations end of the world.

Q. Now, during your direct examination you referred a number of times to BP trading areas. Did BP's trading [96] areas overlap State lines?

A. A trading area in our definition of them for pricing purposes is a relatively small area. For instance, in Baltimore, I think just pulling 17 trading areas we would have in the Metropolitan Baltimore for pricing purposes. When you get out of the State in more rural sections, there would be perhaps larger and they might overlap state lines.

Q. I have nothing further. Thank you.

CROSS-EXAMINATION BY MR. DROGULA:

Q. I believe you stated earlier that BP has no refineries, is that correct?

A. No, sir. We have a refinery market in Pennsylvania. We have two refineries at the time of the merger, one of them in Port Arthur, Texas and one of them at Marcus Hook and at the time of the Florida-Georgia divesture to American Petrifina, the Texas Refinery went to that. We have this refinery in Marcus Hook which we spent $180 million on and made it into a decent plant.

Q. Does BP produce crude oil?

A. We are a subsidiary of SOHIO. BP, itself, does not produce crude oil. SOHIO, the parent, produces crude [97] and 10% of its refinery capacity.

Q. How many refineries does SOHIO operate?

A. Two. There are three refineries in the SOHIO company. One is a BP refinery here in Marcus Hook and two in Ohio. One is at Toledo and one at Lima.

Q. Does BP receive premium products from SOHIO Refineries?

A. Yes, through trade and exchanges, basically.

Q. Are you aware, Mr. King, that SOHIO, for purposes of the Federal Regulatory program is classified as an independent or crude poor refinery?

A. Yes.

Q. Are you aware of that name, SOHIO as a refinery which purchases more than 70% of its crude oil feed stock from sources it neither owns nor controls?

A. Correct.

Q. Are you also aware that then because SOHIO is an independent refiner that it is more heavily dependent on so-called new crude oil or foreign oil for its refinery feed stock?

A. I didn't know – all I knew is as an independent

[98] refiner, we had to purchase at least 70% of our through put from some other source than our own control.

I wasn't aware it made any difference whether it was old or new.

Q. From your 27 years with SOHIO and BP, are you familiar with the term the two-tier pricing system?

A. I am.

Q. Are you aware that means there is an item known as old oil which the Government controls at approximately $5.25 per barrel?

A. Correct.

Q. Are you aware there are other items known as new oil or released oil which is domestic petroleum and which is permitted to float at the market price?

A. Correct.

Q. You are aware that foreign oil imported into the United States is also uncontrolled.

A. Correct.

Q. Are you also aware SOHIO, because of its status as an independent refiner, experiences higher crude acquisition costs than other refiners who are crude rich or who rely [99] more on old oil?

A. Correct.

Q. Now, from your experience in the industry in refiner A were refining crude oil in which it had a laid-in inventory cost of $9 per barrel and refiner B were refining crude oil in which it had a laid-in cost of $12 per barrel, which refiner would have the higher cost in the petroleum products it produced?

A. Obviously the one that paid the higher price for crude oil.

Q. And which refiner would most likely have the higher tank wagon price to its dealers?

A. The refiner who had to pay the higher crude oil price.

Q. If the dealers of both refiner A and refiner B were to operate with the same cost and the same mark-up, which refiner would find its product posted at the gasoline pump at a higher price?

A. Refiner B who has the higher fuel cost.

Q. Would you agree the direct marketing technique offers an opportunity for refiners experiencing higher [100] crude oil prices to at least offset, in part, the advantage which Refiner A, the crude rich refiner, enjoys in the market place?

A. Correct.

Q. In May of 1973 when the BP Northeast project report was issued, would you agree there was generally a period of time of crude oil shortages?

A. Yes. I think I'm correct in recalling that the supply of petroleum products started to decrease in the beginning of 1973.

Q. Would that place an additional cost burden on independent crude poor refiners such as SOHIO?

A. It very definitely did.

Q. Would that perhaps explain in part why BP was interested in investigating the possibility of the direct marketing technique?

A. That certainly would be one of the factors that would be considered and was considered by us to maximize, to make the best we could out of a bad situation.

Q. Generally, from your experience in the Maryland marketing area, which is higher, the dealer wagon price or [101] the spot market price?

A. Generally, the dealer tank wagon is higher than the spot price.

Q. So that if wholesalers and jobbers were to supply their retail outlets with gasoline purchased on the spot market, would their cost be comparable to, or lower than BP dealers paying the tank wagon price?

A. Would you ask that question again.

(Whereupon, the question referred to above was read back by the reporter.)

A. I think that obviously has to be a function of what our dealer tank wagon price is to the spot market and at any given time – in other words, I agree that in general dealer tank wagons are higher than the spot market but that doesn't say BP is because an independent refiner it has considerably higher crude costs to pass on than others. So, the spot market is not controlled by BP, it's controlled by a lot of these other people. So that we may have a tank wagon that is higher than others in relation to that so that our dealers might have a higher price than these wholesalers who are supplying these other independents or these other [102] people in here. This is the cross we have had to bear for a couple of years here and why our prices generally have not been competitive.

It's only in the last few months when through the allocation program and the entitlement program of companies like ourselves that we have been able to be more competitive. Prior to the entitlement program, this $2 kind of number that wasn't fair – and that was the kind of differential we suffered with and our customers and the dealers suffered with because of our cost.

CROSS-EXAMINATION

BY MR. ABRAMS:

Q. Gentlemen, I'm going to hand you the document that was produced to all the parties in this litigation subject to protective order. It is entitled "Gas and Go Price Survey."

I will ask you if you can identify it?

MR. CAMPBELL: Yes.

Q. Would you indicate when that survey was made?

MR. CAMPBELL: Well, the prices reflected on here are November 13, 1974 and July 7, that's December 7, December 14 and January 7, 1975.

[103] EXAMINATION OF MR. CAMPBELL

BY MR. ABRAMS:

Q. I see you are looking at the fourth page of that document which consists of 19 pages.

A. Yes.

Q. Could you flip through that and see that all the pages which indicate a survey have dates and locations on them? Is that correct?

A. Yes.

Q. Do you know who performed this survey?

A. Probably the manager of the respective station shown at the top of each survey.

Q. And then he reported these figures or wrote down these figures and gave it to his superior?

A. Yes.

Q. Can we go back to the fifth page? Do the prices indicated on line with the BP designations – are they company or dealer operated facilities?

A. Company operated.

Q. Is there an indication of whether these other stations are company or dealer operated?

[104] A. No, there is no indication on this survey whether they are company or dealer operated.

Q. Thank you. I am going to hand you another document that was also produced subject to the protective order in this litigation. It's 16 pages. The first page states on top, "Competitive Pump Prices".

Baltimore, it has a list of companies and indicated number of stations. I will ask if you can identify this document.

A. Yes, I can identify it.

Q. Can you say how it came about?

A. This is a summary of a number of price surveys like the previous exhibit.

Q. Would they also perform by your – would you say sales representatives?

A. By our station manager at company operated stations, by sales representatives and by supervisors.

Q. What does this first page indicate?

A. Across the top it indicates regular pump prices exclusive of tenths of cents per gallon and down the left-hand margin are various companies.

Q. Do the numbers in the boxes represent the number [105] of stations of those companies posting at that price which is indicated above?

A. That's correct?

Q. The ninth page of that document is entitled, "Regular price tenths omitted." It has major brand stations average, predominate and private brands.

Could you elucidate on what that reflects?

A. This would be a further summary of the previous page we just discussed which shows the average retail price of regular gasoline for the stations surveyed of each competitive brand and then the price at which the largest number of stations for a particular brand that were surveyed were posted.

Q. What does Gas and Go mean, as indicated on that sheet?

A. Those are BP Gas and Go service stations.

Q. Does it have a price there of their posting?

A. Yes.

Q. That's the number right to the right of the word Gas and Go?

A. That's right. It's under the average column.

[106] Q. Thank you. I would like these marked for identification.

(Whereupon, documents referred to above were marked as Plaintiff's Exhibits 1 and 2.)

Q. Thank you. I have no further questions.

CROSS-EXAMINATION OF MR. KING,

BY MR. LEWIN:

Q. Mr. King, can you tell us how Standard Oil Company of Ohio markets gasoline in the State of Ohio?

A. Standard Oil in Ohio sells upwards of 80% – sells gasoline primarily through retail outlets numbering 2800 about now. Most of these are dealer operators but which of that 2800 approximately 300, 700 to 800 are their company operated stations.

Q. And for what period of time has the Standard Oil Company marked both through dealer operations and direct retailing?

A. SOHIO has been alone in the industry and its company operated service station operation and has been doing this for at least 30 years that I have been associated [107] or 27 years with the company.

Q. Is there any, in your judgment, expertise required of a refining company to operate company operated retail outlets?

A. I think very definitely.

Q. Based on your experience as you have testified to earlier, as a regional manager and district manager in Ohio, what has been the market conditions, the state of the market in Ohio, having both company operated stations and dealer operated stations?

A. I guess I don't understand exactly what your question is aimed at. As far as I am concerned, the presence of the company operation in the State of Ohio has worked to the benefit of all in terms of to the consumer and again in terms of lower prices, in terms of more convenient hours of operation. Typically, these are stations that are open 24 hours a day, seven days a week, this kind of thing, as contrasted to dealers who

might open on a part of either day or week. They have the advantage of setting a standard of housekeeping and service to the customer that hopefully the dealer organizations emulate [108] of follow so they can improve the service.

I think that's one of the ingredients why SOHIO in that market had as high as 30% of the gasoline sold through its SOHIO stations.

Q. Does the presence of company operated SOHIO stations, in your experience, have any adverse affect upon dealers as a group?

A. Well, I am certain that the presence of the company operated stations in a City like Cleveland where SOHIO dealer operations – their average through-put per station is in the 40,000 to 50,000 gallon a month category, that the fact that having that volume – these dealers generally up price. By that, I mean, they price the higher price than what we think is justified at a salaried station. In the times when the margins to dealers were for regular gasoline between seven and eight cents, the relationship, the prices were almost identical at salary stations and dealers. Now, it's changed in the last several years. I'm talking about not just two, I'm talking about six or seven, where a great many of these dealers have decided, gee, I'm going to get 10 cents a gallon instead of seven to eight [109] and as a result the public is paying more for that gasoline than what they are at the company operated stations.

Q. Specifically, has the presence of company operated stations in Ohio had any impact on dealer turnovers, driving dealers out of business?

A. No. I think again on the contrary our share of the market at 30 has provided a tremendous stability among dealers. The SOHIO dealers turnover is probably

one of the lowest in the industry. As I said, our company operation is a very significant part of that operation in Ohio. I said, I think it adds to the image, either in terms of the services to the customer, in terms of enabling dealers to be successful. If, for instance, in BP, where you are talking about one or two per cent of the market to have some dealer up prices to get a higher margin – he is not going to go under because his volume isn't the same. When you have that significant a share of the market, you've got a lot of things going for you and dealers can get higher prices for their products, as evidenced by what is going on in Ohio.

(Examination concluded.)

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[110] State of Maryland, City of Baltimore, SS:

I, James F. O'Brien, Jr., a Notary Public in and for the State of Maryland, County of Prince George's, do hereby certify that the within named CHARLES H. KING and J.D. CAMPBELL, personally appeared before me at the time and place herein set out and after having been duly sworn according to law, were interrogated by counsel.

I further certify that the examinations were recorded stenographically by me and then transcribed from my stenographic notes to the within typewritten matter in a true and accurate manner.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As Witness, my hand and Notorial Seal, this ___ day of July, 1975, at Baltimore, Maryland.

Notary Public